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

VAT Expert Group
39th meeting – 26 March 2025
taxud.c.1(2025)3603737

Brussels, 12 March 2025

VAT EXPERT GROUP[1]

VEG NO 125

Platform Economy – Follow up

[1] Group of experts on value added tax to advise the Commission on the preparation of legislative acts and other policy initiatives in the field of VAT and to provide insight concerning the practical implementation of legislative acts and other EU policy initiatives in that field.

1. INTRODUCTION

The Council adopted the ViDA (VAT in the Digital Age) package at the 11 March 2025 ECOFIN following the reconsultation of the European Parliament[2].

The ViDA package agreed in Council has three different volets: i) Digital Reporting Requirements (DRR) and electronic invoicing, ii) Platform Economy and iii) Single VAT Registration.

Work has begun on the implementation of the Platform Economy volet of the package (hereafter referred to as "platforms"). Members will recall that, at the 38th meeting of the VAT Expert Group, the Commission services briefly outlined the next steps towards implementation and called on members to provide further suggestions on elements which could and should form the basis of the explanatory notes on the platforms element of ViDA.

It should be noted that a similar request was made to delegates of the Group on the Future of VAT.

Based on the correspondence received from both delegates to the Group on the Future of VAT and members of the VAT Expert Group, the Commission services have compiled a list of possible topics to be clarified in explanatory notes that will be discussed at a forthcoming Fiscalis workshop. These topics are based around various themes that are as follows:

- **The timing of the adoption of rules and regulations relating to the measure** – i.e. that businesses are allowed sufficient time to ensure that adequate systems can be put in place;
- **The application of the deemed supplier regime (DSR)** – that is how Article 28a works in practice;
- **The roles and responsibilities of platforms** – in particular, given the flexibilities allowed to Member States, how can these be implemented in as automated manner as possible;
- **The interaction between the DSR, Article 28, and the special scheme for travel agents** – in particular how to avoid travel agents being unwittingly captured by the DSR;
- **The application of the SME exception** – in particular how Member States which avail themselves of this option will allow the SME to demonstrate to the platform that they are using the SME scheme;
- **The facilitation fee** – i.e. how the taxation of this fee will work in practice and under particular circumstances;
- **Article 46a** – what is the scope and range of this Article;
- Various remarks/clarifications on the **Council Implementing Regulation.**

[2] Taxation: Council adopts VAT in the digital age package - Consilium

Further details are provided below, but as a general remark, the Commission services found the input from both Member States and businesses to be pertinent and useful. The Commission services also recognise that, whilst some elements will be down to national competence due to the flexibilities inherent in the adopted legislation, it is nevertheless worthwhile to consider a framework, or at least some examples, of how these flexibilities are implemented.

It should also be noted that some of the issues which have been suggested are more straightforward than others, however the Commission services have attempted to provide as comprehensive a list as possible of the issues raised. Nevertheless, if there are issues which members feel should be included and are not listed, they are invited to inform about such issues in order that they can be included in further deliberations.

2. MORE DETAIL ON POSSIBLE TOPICS

2.1. The timing of the adoptions of rules and regulations relating to the measure

For much of the platforms volet the legislation as it stands, alongside the explanatory notes, should give sufficient guidance for businesses to adapt their systems. However the text as adopted states in Article 135(3) of the VAT Directive[3] that Member States should communicate to the VAT Committee, before 1 July 2028, the criteria, conditions and limitations applicable relating to the treatment of short-term accommodation rental, and that the Commission should publish a list of these criteria by 31 December 2028 - that is, some six months following the entry into force of the measure.

This does not appear practical given that platforms will be obliged to adapt their own systems in accordance with these various criteria.

Similarly, there is limited guidance on the application of the SME exception for those Member States wishing to adopt it.

Therefore the Commission services consider it important, in order to ensure a smooth implementation, that Member States engage in open communication with impacted businesses throughout the implementation process, and, if possible, make information on their use and practical application of these flexibilities publicly available at least 1 year before the regulations enter into force.

2.2. The application of the DSR (Article 28a)

The DSR is at the heart of the platforms element of the ViDA package, and whilst the general principle is relatively straightforward (where the underlying supplier does not charge VAT, the platform charges it), there remain some questions which need to be considered.

First of all, it should be made clear what the scope of the measure is. Whilst it appears that Member States have a clear understanding of the simple scenario in which an underlying supplier rents, for example, accommodation services via a platform, the market can at times be more complex.

[3] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1), as amended.

Questions have also arisen as to the nature of the service. For example, how would ancillary services be treated (i.e. breakfast, cleaning) if they are charged separately, i.e. outside of the platform? Further, how would other charges, such as tourist taxes, be treated?

The various business structures of the market give rise to additional questions. There are instances in which property management companies, for example, or listings intermediaries are involved in a chain transaction which takes place on the platform. These types of transactions should be outlined and their treatment clarified, along the lines of a basic principle.

With this in mind, issues which could be further clarified in explanatory notes are as follows:

1. Clarification that the deemed supplier regime applies irrespective of the tax status of the customer;
2. Clarification that home swapping is not caught by the deeming provision;
3. Clarification, with examples, of chain transactions within a platform, including the use of further intermediaries and property management companies;
4. Clarification of how ancillary services which are charged 'outside' the platform should be treated;
5. Clarification of how other taxes, levies and fees (such as a tourist tax) should be treated;
6. Clarification of how to treat 'no-shows' (where customers book a room, but don't turn up) and cancellations under the deemed supplier regime;
7. Clarification of how to treat price reductions and discounts offered by the platform;
8. Clarification of the chargeable event for reservations with a free cancellation policy;
9. What is the procedure when an underlying supplier thinks they will pay VAT on the supply in the future (i.e. they are waiting for the attribution of their VAT number);
10. Clarification of what is meant by 'unless there is a change in their activity as a taxable person' in Article 9c of the Council Implementing Regulation;
11. An explanation of the relationship between short-term accommodation rental in Article 28a and Article 132(2)(aa);
12. Clarification of whether joint and several liability is still applicable if a supply is made under the deemed supplier regime and the platform does not pay the VAT;
13. Clarification of the procedure when part of the passenger transport service takes place outside the EU;
14. What supplies should be included in the SME threshold calculation (for example, should the facilitation fee be included in the calculation of the underlying supplier's SME threshold)?;
15. What does the platform do about B2B deemed supplies? Can the OSS (One-Stop Shop) be used, or would the platform be obliged to register in other Member States?;
16. What happens if the stay is prolonged for more than 30 nights, or shortened to less than 30 nights?;
17. What if a passenger transport service is partly by road and partly not (i.e. a car drives onto a ferry to cross a river)?;

18. What is the impact of Article 28a on other provisions, such as the invoicing rules, and Articles 44, 196, 214(1)(d) and 221(3) of the VAT Directive, and Article 55 of the VAT Implementing Regulation[4]?.

2.3. The roles and responsibilities of the platforms

As the platform will be taking on additional responsibilities, it is important that they have a clear idea of what they are required to do in order to fulfil the conditions (or not) of Article 28a, and indeed of the SME exception. Whilst the goal would be to enable the platforms to initiate automated systems to as great an extent as possible, it is recognised that Member States have competence in some of these areas.

Therefore, the explanatory notes could give further clarity on the following:

1. Clarification and specific examples of when a platform can and cannot be held liable due to false information coming from the underlying supplier;
2. How is the situation rectified if both the platform and the underlying supplier pay VAT?;
3. What happens if, in a Member State which uses the SME exception, the SME exceeds the threshold but does not inform the platform?;
4. What is the exact responsibility of a platform in validating a VAT number?;
5. In situations in which the underlying supplier is not in the Member State of the supply, which Member State can require validation of the VAT number?;
6. What are examples of 'appropriate means' in Article 28a(4)?;
7. Clarification that if an underlying supplier makes supplies in different Member States, the VAT number needs to be given to the platform once for each Member State;
8. If a VAT number is supplied to the platform after the platform has accounted for the VAT under the deemed supplier regime, what is the procedure?;
9. What would happen if a VAT number is provided, but the declaration to pay VAT is false. How should Member States approach this?;
10. Regarding record keeping obligations, is there a way to reduce the administrative burden regarding record keeping?;
11. Can Member States introduce an obligation under Article 242a to transmit records on a regular basis?;
12. Should Article 242a apply when supplies are exempt?.

2.4. The interaction between the deemed supplier regime, Article 28, and the special scheme for travel agents

There have been a number of questions seeking guidance on the differences between Article 28 and Article 28a, and concerns raised on the possibility that travel agents will be 'caught' by the DSR. These elements have practical consequences, and it is important to have

[4] 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).

a common understanding of how these elements interact and in particular, where the DSR applies and where the special scheme for travel agents applies.

In this respect, it has been suggested that further clarification is necessary on the following:

1. If Article 28a is not applicable, can the platform use the special scheme for travel agents?;
2. What is the clear and divisible line between Article 28 and Article 28a (examples should be provided);
3. What is the clear and divisible line between Article 28a and the special scheme for travels agents (for example the non-inclusion of undisclosed agents in Article 28a) – examples should be provided;
4. What is the clear line between a disclosed and an undisclosed agent?;
5. How to identify that a travel agent is using the special scheme for travel agents? Can a travel agent 'already' using the special scheme for travel agents continue to do so?;
6. What is the clear difference between a platform facilitating a supply and a travel agent using the special scheme;
7. What if the underlying supplier applies the special scheme for travel agents to the underlying supply? Does the DSR apply?;
8. Practical issues regarding the fact that under the DSR the facilitation fee is a separate service.

2.5. The application of the SME exception

The SME exception was added by the Council in order to provide Member States with some additional flexibility on the scope of the measure. The relevant legislation can be found in Article 28a(5) and is as follows:

> *"5. Notwithstanding paragraph 1 of this Article, Member States may exclude from the scope of that paragraph supplies of short-term accommodation rental services or passenger transport services by road, or both, made within their territory under the special scheme provided for in Title XII, Chapter 1, Section 2."*

It is apparent that the Council intended to give Member States the flexibility to decide how the SME exception would be administered – this is noted in that there are elements in the Council Implementing Regulation which clarify the operation of Article 28a(1)(a) and (b), but there are no similar provisions relating to the SME exception, and in particular how the platform can be informed and assured that the underlying supplier is using the SME scheme and therefore the DSR should not apply.

From the business community, the main concern is how this could be administered in a scalable, automated and harmonised way. There are concerns that the Member States who do avail of this option will have a variety of means by which the underlying supplier demonstrates to the platform that they are operating under the SME scheme, which will increase the costs and complexities for platforms operating in different Member States.

Further, the new SME scheme rules as of 1 January 2025 allow eligible taxable persons from other Member States to use the SME scheme of a Member State in which they are not established. How will this interact with the operation of the SME exception? Would it be

clear that, where an underlying supplier is established in a Member State in which the SME exception has not been introduced, and makes a supply in a Member State in which the SME exception has been introduced, the DSR should not apply?

Finally, what would be the situation when a Member State has exercised the SME exception for one supply (say, passenger transport), but a supply via a platform consists of a mixture of passenger transport and short-term accommodation rental? Whilst this situation would not arise often, it would be important for the platforms to know how to deal with such supplies in order to maximise automation.

In that respect, elements which would seem to require clarification in the explanatory notes are as follows:

1. It should be clarified that it us up to the Member State to define how the platform can tell if the underlying supplier is using the SME scheme – however, reference is made to the earlier point, that these methods should be automatable to the fullest extent;
2. The relationship between the SME exception and Article 9g of the Council Implementing Regulation should be clarified;
3. How SMEs from one Member State can demonstrate that they are an SME to the Member State of supply, and how non-established underlying suppliers are treated in general;
4. The treatment of mixed supplies – i.e. supplies including an element for which the SME exception applies, and one for which it does not (accommodation including transport to/from airport, for example);

2.6. The facilitation fee

The facilitation fee does not necessarily follow the VAT treatment of the underlying service, and this is a separate supply. This is because the facilitation fee should be taxed at the standard rate of VAT, and not at any reduced rate which may be applicable to the underlying supply. This does, however, lead to a number of complexities, for which clarification will be required. In particular, the following has been mentioned:

1. How to treat a facilitation fee which is charged to SMEs by non-established platforms?;
2. A general explanation of how the VAT is applied to the facilitation fee;
3. How do the invoicing rules apply regarding the facilitation fee?;
4. How would a platform treat the facilitation fee of an exempt transport service provider?;
5. Regarding the place of supply of a facilitation fee to a taxable person – would this be considered an electronically supplied service?;
6. Clarification of the rate of the facilitation fee (i.e. always at the standard rate, regardless of the underlying supply);
7. How to act when the facilitation fee is split between the underlying supplier and the customer.

2.7. Article 46a

Article 46a relates to the place of supply of the facilitation service of a platform provided to a non-taxable person. It should be recalled that many Members States were of the view that this approach better reflected the principle that VAT applies in the place of consumption of the goods or services.

Nevertheless, this also gives rise to some complexities, not least because of its apparent wide nature. Therefore the following points were suggested as requiring further clarification:

1. Clarification is needed as to when the provision applies;
2. Clarification that when the supply is B2B, it will always fall under the normal rules;
3. Clarification that both possessing and communicating a VAT number impacts both on Article 46a and the application of the Deemed Supplier Regime (because Article 46a applies to the facilitation fee provided to a non-taxable person);
4. Clarification is required on the wider implications of this Article on the facilitation fee relating to the supply of goods (under Article 14a);
5. How would this work for flights and cruises booked under a platform? It would be burdensome for a platform to split the fee across a number of countries;
6. Should this be restricted to short-term accommodation rental and passenger transport services?;
7. How would this provision work in relation to existing deemed supplier provisions?.

2.8. Questions arising from the VAT Implementing Regulation

Finally, a number of suggestions were made that further clarity is necessary on a number of aspects relating to the VAT Implementing Regulation, as follows:

1. If a platform is not involved in the payment process, how can they know about cancellations and refunds?;
2. Examples should be provided of the application of the implementing regulation, in particular on the definition of ‘facilitates’;
3. It should be stressed that the proof required for a platform to not act as a deemed supplier should not be overly burdensome;
4. Article 9d should also apply where the platform acts as a deemed supplier on the basis of erroneous information from the underlying supplier;
5. How should information from a 3rd party be considered?;
6. Explanation should be provided of the purposes of Articles 9f and 9g.

3. SUMMARY

It should be borne in mind that the lists above are a snapshot of the points raised meant to steer the discussion and further work on facilitating implementation work. Whereas the explanatory notes can and will be as detailed as necessary, it is important, when considering topics for discussion at a forthcoming Fiscalis workshop, that the most salient and important elements are highlighted for discussion, in order that sufficient time can be devoted to these points.

4. QUESTIONS TO THE MEMBERS

The members are invited to:

- Give their views on the points made above;
- Suggest any additional topic;
- Outline which elements, in their view, would be more suitable as a point for debate for a Fiscalis Workshop.

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