

October 2023

# eu travel tech

## VAT in the digital age – Development of the deemed supplier regime

### Summary

- The deemed supplier regime (DSR) included in the ViDA package brings significant complexity and negative impacts for STR hosts, platforms and wider tourism economy.
- Both the original proposal and the new Spanish presidency compromise fail to achieve the basic objectives set out for the DSR.
- The compromise text does not address significant shortcomings around VAT and channel neutrality while introducing added complexity, legal uncertainty and fragmentation across the EU.
- We urge Member States to carefully consider the impact of the proposed measures and the practical compliance issues they raise.

### Background

The VAT in the digital age package, proposed by the Commission in December 2022, includes a proposal to radically alter the VAT treatment of short-term accommodation rentals (STR), in the form of the so-called deemed supplier regime (DSR). The DSR foresees that the provision of STR services by hosts who would otherwise be VAT-exempt should be subject to VAT, if the service is intermediated by an STR platform. The platform would then be responsible for accounting for, collecting and transmitting the VAT to tax authorities.

The main justifications for the introduction of the DSR were the need to harmonize the disjointed approach to the VAT-treatment of STRs across the EU and the supposed need to level the playing field in the VAT-treatment of STRs and hotels (based on the assumption that these services directly compete with each other).

A compromise has now been raised by the Spanish Council presidency which would allow Member States to circumvent the DSR by exempting STR services “*in parts of the territory where it can be justified that the exemption will not lead to a distortion of competition*”.

### Views on the compromise

As the representative associations of STR hosts, platforms and travel agents intermediating STR services, ECTAA, EHHA, and eu travel tech would like to comment on the proposed compromise.

The compromise presents a range of issues, practical and conceptual, while failing to address the fundamental flaws of the DSR. As previously raised by stakeholders, the DSR violates the principles of VAT and channel neutrality. In accordance with the proposal and the current compromise, STR platforms would be unfairly disadvantaged vis-à-vis other sales channels, as only they would be obliged to comply with the DSR. In addition, the smallest and most vulnerable service providers would see their STR services become subject to VAT while being deprived of their right to deduct input VAT.

Regarding the objective to establish a “level playing field for businesses, regardless of business model”, the compromise runs counter to this premise. If there was a distortion of competition between STRs and hotels, two ubiquitous types of services in Europe, it would logically occur all over the EU. By permitting exemptions to the DSR on a regional level, the compromise text correctly recognizes that such distortions of competition do not exist, as STRs and hotels do not provide comparable services. Several Member States have accurately accounted for this by aligning the VAT treatment of STRs and hotels only when STRs provide comparable services to hotels (accommodation including breakfast, cleaning, linen) and thus may be judged to directly compete with them.

Beyond conceptual concerns, the compromise raises practical issues, particularly regarding its potential implementation. The novel approach in Art. 28a, 135, and 177 would lead to diverging national and even regional rules, thus running counter to the prominent goal of harmonizing VAT across the EU. Art. 28a brings specific concerns, as the VAT ID would no longer be the only means of proving an STR host's VAT registration. For STR platforms, it is impossible to verify the authenticity of other VAT identification documents or certificates of their thousands of suppliers. The lack of harmonization extends into the definition of STRs themselves, which is to remain based on national law. Rules across the EU would thus remain fragmented, unclear and complex to operate.

The compromise foresees that Member States would need to adopt national/regional STR VAT exemptions before the adoption of the Directive, which may leave far too narrow of a window to go through normal legislative channels to adopt such changes. If it is not feasible to adopt exemptions within a relevant timeframe, the substance of the compromise appears to be irrelevant.

It is further unclear how the rules would operate for STR hosts providing services in both a VAT exempt region and a VAT taxable region. Such scenarios would significantly complicate compliance for platforms and add complexity to the already onerous DSR obligations. In addition, it would be possible for EU law to contradict national VAT legislation: In Member States such as France, STR services are VAT-exempt, unless they are provided in conjunction with additional services similar to hotel services (breakfast, linen). If an STR service would thus be offered

together with breakfast in a region of France where STRs have been VAT exempted in accordance with the DSR, it would be unclear which framework is applicable; the DSR (i.e. exempt from VAT) or national tax law (i.e. subject to VAT). It is important to note that platforms are generally not aware of whether additional services are provided, as they only intermediate the accommodation.

Lastly, the compromise fails to address the pressing issue of potential double taxation of platforms' facilitation fees. Many non-EU states have introduced VAT for electronically supplied services (ESS)<sup>1</sup> based on the place of establishment of the recipient of the service (i.e. customer or homeowner/provider), while the ViDA proposal foresees that the facilitation fee is subject to VAT where the underlying services is supplies (i.e. where the accommodation is located).

In considering the above-mentioned shortcomings, we can only conclude that the proposed compromise does not address the fundamental mismatch between the DSR's stated goals and its drawbacks, while introducing additional complexity and fragmentation in the VAT framework. To put it in the words of EVP Dombrovskis, we call on Member States and the Commission to work towards a compromises that *"simplify and streamline our VAT rules, make life fairer for businesses and promote the digital transition across Europe"*. The current compromise fails to live up to this ambition.

### **Alternative solutions**

We reiterate our request that the concerns raised in the context of the ViDA package and DSR are addressed through means that provoke less complexity and fragmentation. It would be beneficial for Member States to first consider solid data gathered in the context of DAC-7 reporting and to take policy decisions based on such data. If required, additional obligations in the form of enhanced CESOP-type reporting could give tax authorities full visibility over users' supplies to monitor for VAT evasion.

In light of the package's goal to further level the playing field between STR offers and hotels, we underscore that Member States are already fully empowered to remove any existing national VAT exemptions or rate reductions applicable to STR within the scope of the current EU VAT Directive. As such, the STR deemed supplier regime is an ineffective measure to address any level playing field issues, which would significantly harm the EU tourism and accommodation platform/hosting ecosystem.

---

<sup>1</sup> [Data](#) by Avalara puts the number of countries with VAT/GST on ESS at approximately 60