THE LISBON INTERNATIONAL & EUROPEAN TAX LAW SEMINARS

Nº 9 / 2024

COMPARING DEEMED SUPPLIER REGIMES: E-COMMERCE AND SHORT-TERM RENTAL/PASSENGER TRANSPORT PLATFORMS IN THE EU VAT SYSTEM

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ISSN: 2795-4676

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Nº9/2024

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Comparing deemed supplier regimes:
e-commerce and short-term rental/passenger transport platforms in the EU VAT system

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Abstract

The number of transactions made through digital platforms is constantly growing and intensive legislative work is underway around the world to include them in the VAT collection process. The paper concentrates on the concept of a "deemed supplier" as the most far-reaching legislative solution imposing the responsibility on platforms for VAT collection. Under this concept, in legally defined circumstances, platforms would be responsible for charging and collecting VAT also on the transactions they facilitate (underlying transactions).

Currently, there are two models of deemed supplier designed for platforms in the European VAT system: (i) the model regulated in article 9a of Regulation 282/2011 (referring to platforms providing, in their own name but on behalf of the provider, electronically supplied services), and (ii) the model regulated in article 14a of the VAT Directive (referring to platforms facilitating some supply of goods). However, the European Commission is planning to introduce the new deemed supplier regime to the VAT Directive (article 28a of the VAT Directive, if the changes come into force). Under the new rules, platforms in short-term rental and passenger transport sectors will become responsible for collecting and remitting VAT to tax authorities when their users are not treated as taxable persons for VAT purposes.

The article discusses and compares the two latest models of deemed supplier in the European VAT system, i.e., a model for e-commerce platforms and a model for short-term rental and passenger transport sectors platforms. Although the mechanism of operation of these models is basically the same, they differ in many aspects, as they are designed to achieve different goals. Properly designed deemed supplier regimes seem to be an effective solution, but the new rules should not only ensure fair competition with traditional business but should also allow platforms to continue to grow in the EU.

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Introduction

While it is generally desirable for taxes to be collected and remitted by taxable persons, there are situations that suggest the involvement of third parties, such as intermediaries, in this process. As indicated in doctrinal literature, the primary advantage associated with such a liability regime is that intermediaries are typically fewer in number, making them easier to monitor than customers, especially if the latter happen to be end consumers[1]. Furthermore, enforcing compliance targeting a concentrated group of wealthier entities is a much simpler task than monitoring a dispersed set of individuals with lower incomes[2]. Among the categories of intermediaries who may be held accountable for VAT collection, digital platforms are also included.

Digital platforms play a significant role in shaping the global economy. Initially, they intermediated the distribution of digital content, but subsequently expanded their scope to include the facilitation of tangible goods delivery[3]. Presently, they also play a substantial role in the provision of tangible services such as accommodation (called also short-term rental "STR") and transportation (called also ride services)[4]. The platform economy has grown rapidly in the European Union ("EU") in recent years, especially in the e-commerce[5] and service sectors[6], where it has disrupted traditional business models and created new opportunities for innovation and competition.

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1 G. Beretta, *European VAT and the sharing economy*, Kluwer Law International, B.V, S.l. 2019, p. 275.

2 M. Viswanathan, *Tax Compliance and the Sharing Economy [in:] The Cambridge Handbook of the Law of the Sharing Economy*, N. M. Davidson, M. Finck (Eds.), Cambridge University Press 2018, p. 362.

3 Zieba, S. Durst, *Knowledge Risks in the Sharing Economy*, [in:] Knowledge Management in the Sharing Economy, E.-M. Vătămănescu, F. M. Pînzaru (Eds.), "Knowledge Management and Organizational Learning" series, Springer International Publishing, Cham, 2018, vol. 6, p. 255.

4 OECD, *Digital platforms have an important role to play in value added tax policy in the sharing and gig economy*, https://www.oecd.org/tax/consumption/digital-platforms-have-an-important-role-to-play-in-value-added-tax-policy-in-the-sharing-and-gig-economy.htm, accessed 28 May 2023.

5 According to Eurostat, 22.8% of EU enterprises conducted e-sales in 2021, generating 17.6% of their total turnover. Most of these e-sales were made via websites or apps, either through enterprises' own websites or apps (85.6%) or through an e-commerce marketplace (44.4%). Eurostat, *Digital economy and society statistics - enterprises*, at https://ec.europa.eu/eurostat/statistics- explained/index.php?title=Digital_economy_and_society_statistics_-_enterprises, accessed 28 May 2023.

6 In 2019, the combined revenue of platforms and providers in the EU27 ecosystem amounted to EUR 258 billion. Most of the revenue in the accommodation sector was generated by the B&B and hotel accommodation subsector, totaling EUR 4.7 billion. The combined revenue of residence renting, home sharing, and home swapping amounted to EUR 1.6 billion, representing almost a quarter of the total accommodation sector. In the transportation sector, ride-on-demand, ride sharing, and car sharing subsectors generated a total revenue of EUR 4.7 billion in the EU27, accounting for 65 percent of the platforms' revenue in this sector. The delivery subsector generated revenue exceeding EUR 2 billion. European Commission. Directorate General for Taxation and Customs Union. et al., *VAT in the digital age: final report. Volume 2, The VAT treatment of the platform economy.*, Publications Office, LU 2022, p. 39.

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The growth of platform economy presents not only challenges but also opportunities, particularly in terms of enhancing the efficiency of value-added tax ("VAT") collection. This is mainly due to the improved traceability made possible by the intermediation of online platforms[7]. As highlighted in the literature, the platform economy and its economic arrangements are relatively standardized with few dominant players. Therefore, enforcement measures should primarily involve the platform operators[8]. They can contribute to enhancing enforcement and VAT collection in several ways. However, this article focuses solely on the concept of a "deemed supplier" as the most comprehensive legislative solution, which imposes the full responsibility on platforms for VAT collection. In general, according to this concept, an intermediary entity, exemplified by digital platforms, remain fully liable for VAT compliance even for transactions it facilitates (i.e., underlying transactions such as goods delivery, accommodation, ride services). Consequently, the platform becomes responsible for fulfilling VAT-related obligations as if it were the principal supplier of these goods or services.

This solution is gaining popularity, also within the EU. The European Commission ("EC") has taken significant legislative initiatives in recent years to regulate the VAT treatment of the platform economy. These initiatives include in particular the VAT e-commerce package and the VAT in Digital Age reforms.

The VAT e-commerce package[9] is a set of new rules that aim to simplify VAT compliance and combat online VAT fraud for cross-border sales of goods in the EU[10]. The provisions of the e- commerce VAT package entered into force on July 1, 2021. One of the main changes introduced by the package is the deemed supplier regime for e-commerce platforms. This means that electronic interfaces (as online platforms or marketplaces) that facilitate certain supplies of goods between sellers (underlying suppliers) and customers are considered to be the suppliers of those goods for VAT purposes. As a result, they are responsible for charging, collecting, and remitting the VAT to the tax authorities. For the purposes of this article, I will refer to this solution as the DS e-commerce model.

The VAT in the Digital Age reform ("VIDA")[11] is a set of measures proposed by the EC to modernize and create a more resilient, fair, and efficient VAT system by leveraging technological and digital advances. The package consists of three main elements, one of which is updated VAT rules for STR and passenger transport platforms. The EC has proposed that these new regula-

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7 European Commission, *A European Agenda for the Collaborative Economy, Brussels*, COM(2016) 356 final, Brussels, 2.6.2016, www.eurlex.eu.

8 T. Fetzer, B. Dinger, *The Digital Platform Economy and Its Challenges to Taxation*, „Tsinghua China Law Review" vol. 12, no. 1, 2019, p. 49.

9 More information about this reform can be found on the following website: European Commission, *VAT on e- Commerce - One Stop Shop*, https://vat-one-stop-shop.ec.europa.eu/index_en, accessed 28 May 2023.

10 According to the EC's preliminary assessment of the VAT e-commerce package, this reform bolsters VAT compliance. European Commission, *Annex no 6 Ecommerce evaluation* [in:] European Commission, Impact Assessment Report, SWD(2022) 393 final, 8.12.2022, www.eurlex.eu.

11 More information about this reform can be found on the following website: *VAT in the Digital Age*, https://taxation-customs.ec.europa.eu/taxation-1/value-added-tax-vat/vat-digital-age_en, accessed 28 May 2023.

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tions come into effect on January 1, 2025. Under the planned rules, operators of electronic interfaces in the STR and passenger transport sectors will be responsible (as the deemed suppliers) for collecting and remitting VAT to tax authorities when their base services providers (underlying suppliers) do not charge VAT. This is intended to promote a level playing field between online and traditional STR and ride services. For the purposes of this article, I will refer to this solution as the DS service model.

The aim of this article is to compare two models of deemed supplier – DS e-commerce model and DS service model. I will first examine the subjective aspect of these solutions, including the role of the electronic interface and when it becomes a deemed supplier. Next, I will explore the objective aspect, including the types of transactions covered by this solution. Finally, I will discuss their mechanism of operation and assess the pros and cons of introducing these deemed supplier regimes into the EU VAT system.

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1. Comparison of the subjective scope

1.1 Definition of "electronic interface"

The main principles of the DS e-commerce model are outlined in Article 14a of the VAT Directive[12]. This provision states that if a taxable person uses an electronic interface such as a marketplace, platform, portal or similar means to facilitate certain supplies of goods, that person shall be considered to have received and supplied those goods themselves. A comparable provision for the DS service model is planned in Article 28a of the VAT Directive[13]. This provision states that a taxable person who uses an electronic interface such as a platform, portal or similar means to facilitate certain supplies of services shall be considered to have received and supplied those services themselves. This implies that in specific situations, operators of electronic interfaces will be considered deemed suppliers.

The term "electronic interface" ("EI") is not explicitly defined in EU VAT regulations. However, legally non-binding explanatory notes for the DS e-commerce model ("Explanatory Notes")[14] provide some guidance on its interpretation. Given the similarity between regulations, it is likely that the interpretation of EI for the DS service model will be similar to that for the DS e- commerce model. It means that in both cases, EI should be broadly understood as a means for two independent systems or a system and an end user to communicate using any device or program such as a website, portal, gateway, marketplace or application program interface.[15] The phrase "similar means" refers to any present or future technology that enables the electronic conclusion of a sale. It is intended to ensure that deemed supplier models remain relevant and adaptable to new developments in platform economy.[16]

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12 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347, 11.12.2006, p. 1–118.

13 Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards VAT rules for the digital age, COM/2022/701 final, 8.12.2022, www.eurlex.eu.

14 European Commission. Directorate General for Taxation and Customs Union, *Explanatory Notes on VAT e- commerce rules*, 09.2020, https://taxation-customs.ec.europa.eu/commission-guidelines_en.

15 Ibid., p. 8–9.

16 Ibid., p. 11, 13.

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It should be noted that the examples provided for defining EI in the planned Article 28a of the VAT Directive are fewer than those in Article 14a of the VAT Directive. This is because the term "marketplace" is not included as an example in Article 28a. However, like Article 14a of the VAT Directive, the list of examples for defining EI remains non-exhaustive. As such, this difference is unlikely to have any practical implications.

The application of both Article 14a and Article 28a of the VAT Directive is not affected by whether an EI is operated by an EU operator or an entity from a third country. In practice this leads to a problem related to the potential enforcement of VAT obligations from EIs that are foreign residents. According to doctrine[17], because EIs may be situated anywhere globally, and EU tax authorities have limited control over those outside the EU, there is a risk that EU trade through EIs will shift to those outside the EU. This results in distorted competition and reduced effectiveness of EU VAT rules due to difficulties enforcing obligations on EIs outside EU jurisdiction.

This issue seems particularly relevant for DS service model where underlying suppliers are often located in their service-providing, domestic tax jurisdiction. However, if a non-resident EI has the deemed supplier status, tax authorities will enforce it, instead of domestic underlying suppliers. This situation differs from the broader digital platform economy, particularly e- commerce sales of goods, which may often involve online sellers selling into markets around the world from a single location to.[18] For this reason, OECD recommends for tax authorities to carefully weigh the risks and benefits of shifting VAT collection or liability from individual providers that are resident in its jurisdiction into an EI that is not resident in this jurisdiction.[19]

Nevertheless, it is rightly pointed out that in the case of implementing a system based on the destination principle, the effectiveness of this mechanism would still depend on the willingness of non-resident businesses to fulfill their registration, collection, and remittance obligations.[20] Compliance may be easier to achieve with a limited number of foreign EIs as deemed suppliers rather than potentially millions of foreign underlying suppliers as foreign underlying suppliers, even if they are residents. This could explain why the EU legislator has implemented a collecting model based on EI operators.

1.2 The concept of "facilitating" the supplies through EI

The broad definition of the term "electronic interface" suggests that the technology used by the taxpayer is less important than how it operates. In both the DS e-commerce and DS service models, the EI must facilitate specific supplies of goods or services. The term "facilitation" is de-

17 M. Lamensch, M. Merkx, J. Lock, A. Janssen, *European Union/International -New EU VAT-Related Obligations for E-Commerce Platforms Worldwide: A Qualitative Impact Assessment*, „World Tax Journal" vol. 13, no. 3, 2021, pp. 475–477.

18 OECD, *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration*, OECD 2021, p. 62.

19 *Ibidem.*

20 S. Messina, *International/European Union - VAT E-Commerce Package: Customs Bugs in the System?*, „World Tax Journal", vol. 13, no. 1, 2021, pp. 122–123.

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fined in Article 5b of the Implementing Regulation 282/2011 ("IR")[21] and in the proposed Article 9b of IR[22]. According to Article 5b of IR, the term "facilitates" means the use of EI to allow a customer and a supplier offering goods for sale through the EI to enter into contact which results in a supply of goods through that EI. According to the proposed Article 9b of IR, the term "facilitates" shall mean the use of an EI to allow a customer and a supplier offering certain supplies of services through the EI to enter into contact, which results in a supply of those services through that EI.

It should be noted that the proposed Article 9b of IR contains a nearly identical list of conditions as Article 5b of IR, which applies to the DS e-commerce model. As a result, the interpretation of Article 5b of IR contained in the Explanatory Notes can be applied analogously to the DS service model.

This means that the concept of "facilitation" should be understood broadly in both cases, when the sale-purchase from the seller to the customer is realized/concluded with the help of the taxable person operating the EI[23]. The concept includes situations where customers start the purchase process or make an offer to buy goods, and underlying suppliers accept the offer through the EI. This is typically reflected in the ordering and checkout process being facilitated by or with the help of the EI. It is worth to note that completing a transaction via an EI is not determined by the physical delivery of goods (or physical supply of services in the case of the DS service model- author's note), which may or may not be arranged or carried out by the EI operator[24].

Both Article 5b of IR and the planned Article 9b of IR clearly exclude only three situations from the scope of the term "facilitation". The use of the phrase "all" in both provisions indicates that the listed conditions must be met jointly by EI in order to be deemed as an entity that does not facilitate transactions. Even if EI meets at least one of these conditions, it may become a deemed supplier.

According to Article 5b of IR, EI is not considered to be facilitating a supply of goods if all of the following conditions are met: (a) EI does not set any of the terms and conditions under which the supply of goods is made, either directly or indirectly; (b) EI is not involved in authorizing the charge to the customer for the payment made, either directly or indirectly; (c) EI is not involved in the ordering or delivery of the goods, either directly or indirectly.

It is unclear why the EU legislator decided to formulate the list in negative terms since the same result could have been achieved with a positive formulation[25]. However, a similar legislative approach was repeated in the planned Article 9b of IR. According to this provision EI shall

21 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. 1–22.

22 Proposal for a COUNCIL IMPLEMENTING REGULATION amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes, COM/2022/704 final, 8.12.2022, www.eurlex.eu.

23 European Commission. Directorate General for Taxation and Customs Union, *Explanatory Notes on VAT e-commerce rules*, op. cit., p. 17.

24 *Ibidem.*

25 C. Pollak, *Platforms in EU VAT law: a legal analysis of the supply of goods*, Kluwer Law International, B. V, 2022, p. 122.

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not be considered to facilitate a supply of certain supplies if all of the following conditions are met: (a) the EI does not set any of the terms and conditions under which the supply is made, either directly or indirectly; (b) EI is not involved in authorizing the charge to the customer for payments made, either directly or indirectly; (c) the EI is not involved in providing those services, either directly or indirectly.

According to the Explanatory Notes (which can be applied analogously to the DS service model) setting any of the terms and conditions under which the supplies are made should be understood broadly as EI's influence on the obligations and rights of its users, as well as on other elements of the transaction. As indicated in this document, the terms and conditions refer to the rights and responsibilities of both the underlying supplier and the customer in relation to the supply. This also includes the requirements for using the EI by both parties (including maintaining an account on EI[26]). The inclusion of the words "indirectly" and "any" when referring to setting the terms and conditions for the supply of goods is intended to prevent the artificial division of rights and responsibilities between the EI and underlying suppliers[27].

The condition of involving in authorizing the charge to the customer in respect of the payment made will be also interpreted broadly. According to Explanatory Notes it refers to situations where the EI can influence the timing, conditions, and occurrence of customer payments. However, this does not imply that the EI must collect or receive payments or be involved in every step of the payment process[28]. It is important to note that the legislator uses the plural term "payments" in the proposed Article 9b of IR, as opposed to the singular term "payment" used in Article 5b. This suggests a broader interpretation of the condition in Article 9b. It is possible that the use of the singular word "payment" in Article 5b led to interpretative doubts, such as in cases where an e-commerce EI authorized installment payment. If so, these doubts will be resolved for the DS service model.

Similarly, involving in the provision of supplies will also be subject to a broad interpretation. The involvement in the provision of supplies refers to situations where the EI can influence this process in any way.[29]

As rightly noted in the literature,[30] such a broad interpretation of "facilitation" should not, however, lead to the inclusion of unintended intermediaries under the DS e-commerce model

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26 However, it is worth noting that this explanation is quite controversial. As indicated in the literature, in view of the legal text, general conditions are more likely to be thought of as conditions relating to the delivery of goods or the payment for these goods. A. Janssen, *The Problematic Combination of EU Harmonized and Domestic Legislation regarding VAT Platform Liability*, „International VAT Monitor" vol. 32, no. 5, 2021, p. 232.

27 European Commission. Directorate General for Taxation and Customs Union, *Explanatory Notes on VAT e-commerce rules*, op. cit., p. 18.

28 Ibid., p. 19.

29 Ibid., p. 20.

30 M. Lamensch, M. Merkx, J. Lock, A. Janssen, *European Union/International - New EU VAT-Related Obligations for E-Commerce Platforms Worldwide: A Qualitative Impact Assessment, op. cit*., p. 456.

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(in my opinion these remarks can be applied analogously to the DS service model). For example, users might self-organize markets using the chat function on the platforms intended for interactions, like Facebook. In these situations, the platform may "unintentionally" meet the criteria for facilitating. I share the view that it was clearly not the legislator's intention to bring these EIs into the scope of the deeming provision of Article 14a of the VAT Directive[31] (and analogously to proposed Article 28a of the VAT Directive).

Additionally, both Article 5b of IR and the planned Article 9b of IR provide an exception to the above-mentioned rules. These provisions provide a practically identical list of conditions and, according to them, the regime of a deemed supplier shall not apply to EI who only provides any of the following: (a) the processing of payments in relation to the underlying supply, (b) the listing or advertising of goods, (c) the redirecting or transferring of customers to other EIs where underlying supplies are offered for sale, without any further intervention in the supply. The Explanatory Notes state that if EI exclusively carries out any of these listed activities or a combination of them, it will not be treated as a deemed supplier as it would not have sufficient information to fulfill VAT obligations.[32]

In the literature, it is pointed out - and I share this opinion - that the three excluded situations - processing payments, listing advertisements of goods, and redirecting customers - seem somewhat redundant as none of them appear to meet the main rule, which involves EI allowing a customer and a supplier to enter into contact, at least not on its own platform. However, explicitly excluding these situations probably provides more legal certainty.[33]

In summary, both Article 5b of IR and the planned Article 9b of IR defining the concept of "facilitating" transactions seem to be formulated broadly enough to cover most EIs, regardless of the business model adopted by them and the level of facilitation they offer.[34]

1.3 The safe harbor rules

EI operators, acting as deemed suppliers, bear the responsibility for the VAT compliance of underlying transactions that they facilitate. However, in reality, it is not the operators themselves who carry out these underlying transactions, but rather their users - the underlying supplier and the buyer. Consequently, EI operators often rely on information obtained from the underlying suppliers, which increases their compliance burden. One measure that can be implemented

31 *Ibidem.*

32 European Commission. Directorate General for Taxation and Customs Union, *Explanatory Notes on VAT e-commerce rules, op. cit.*, p. 21.

33 M. Lamensch, M. Merkx, J. Lock, A. Janssen, *European Union/International -New EU VAT-Related Obligations for E-Commerce Platforms Worldwide: A Qualitative Impact Assessment, op. cit.*, p. 454–455.

34 More on the different levels of facilitation offered by platforms in the context of the VAT e-commerce package can be found in: Ibid., p. 447–452.

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to rebalance the compliance burdens on EIs is the adoption of a rule reducing or eliminating EI operators' liability for mistakes resulting from reliance on inaccurate information if they can provide evidence of their good faith and reasonable efforts to ensure the accuracy and reliability of the information on which they have acted.[35] Such a measure (so- called safe harbor rules) is embodied in Article 5c of IR (for the DS e-commerce model) and the planned Article 9d of IR (for the DS service model) within the EU VAT system.

Pursuant to Article 5c of IR, an EI operator acting as a deemed supplier shall not be held liable for payment of VAT exceeding the amount declared and paid on supplies if all of the following conditions are met: (a) EI is dependent on information provided by suppliers selling goods through EI or by other third parties in order to correctly declare and pay the VAT on those supplies[36]; (b) this information is erroneous, (c) EI can demonstrate that he did not and could not reasonably know that this information was incorrect. The proposed Article 9d of IR stipulates that where, on the basis of information supplied by the underlying supplier, EI does not act as the deemed supplier, that EI shall not be held liable for the payment of the VAT due should it be subsequently found that that EI should have been deemed to be the supplier. This provision applies if all of the following conditions are met: (a) EI is solely dependent on information provided by the supplier of the services, (b) the information so provided is erroneous, (c) EI can prove that he or she did not and could not reasonably have known that that information was erroneous.

The design of these regulations dictates that in both instances, EIs seeking to limit their liability must demonstrate that all necessary conditions have been met. Consequently, the burden of proof rests with EI operator. However, despite their apparent similarity, Articles 5c and 9d of IR differ from each other.

Firstly, it is important to note the distinctions between the consequences for EIs specified by these two articles. In the case of Article 5c of IR, fulfillment of its specified conditions results in EI not being obligated to pay VAT in excess of the amount declared and remitted on such supplies. Conversely, under Article 9d of IR, EI shall not be held liable for payment of due VAT should it subsequently be determined that it should have been deemed to be the supplier.

The language of proposed Article 9d of IR further indicates that exclusion of EI's liability applies only to situations where it incorrectly did not act as a deemed supplier while relying on information obtained from an underlying supplier. This raises the question of whether EI can partially exclude its liability (for payment of VAT exceeding the amount declared and remitted on such supplies, as is the case in the e-commerce DS model) if it recognizes itself as a deemed supplier but

35 L. Scarcella, *E-commerce and effective VAT/GST enforcement: Can online platforms play a valuable role?*, "Computer Law & Security Review", April 2020, vol. 36, p. 7.

36 In doctrine, attention is drawn to the fact that it remains unclear in which circumstances a platform should be considered "dependent on information provided by suppliers or by other third parties." Where that condition is not fulfilled, the platform will be held liable even if it could demonstrate good faith. M. Papis-Almansa, *VAT and electronic commerce: the new rules as a means for simplification, combatting fraud and creating a more level playing field?*, ERA Forum 2019, vol. 20, no. 2, pp. 220-221.

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incorrectly settles the tax due to incorrect data provided by the underlying supplier. Based on the current wording of Article 9d of IR this does not appear to be possible. It is difficult to find a reason why EU legislator differentiate between e-commerce and service sector EIs in this regard.

Secondly, the distinctions between these provisions also concern their conditions. For instance, with respect to their first condition, Article 5c of IR states that EI must be "dependent" on information while Article 9d specifies that EI is "solely dependent" on information. This condition appears to be excessively restrictive for EIs. They would not only need to demonstrate their dependence on information provided by an underlying supplier, but also that this dependence is absolute. Regarding its second condition, Article 9d of IR states that information provided to an EI by an underlying supplier must be erroneous. This condition is thus somewhat narrower than its analogous condition specified in Article 5c of IR which requires that information provided by an underlying supplier, or third party must be erroneous. This is probably due to the nature of e-commerce transactions, in which the EI's dependence on information from third parties due to the need for transport of goods (for example postal operators, couriers) is greater than in the case of a service-based platform economy. In the case of the third condition, Article 5c of IR indicates that EI can "demonstrate" its lack of knowledge and inability to reasonably know that received information was incorrect while Article 9d requires an electronic interface to "prove" this. In summary, the current wording of proposed Article 9d of IR for DS service model appears considerably more restrictive than that of Article 5d providing safe harbor rules for DS service models

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2. Comparison of the objective scope

2.1 Type of underlying transactions

The DS e-commerce model, in contrast to the DS service model, encompasses only specific types of goods deliveries (it does not apply to the provision of services). According to Article 14a of the VAT Directive, the deemed supplier regime applies if EI facilitates only two types of deliveries: (i) distance sales of goods imported from third territories or third countries in consignments with an intrinsic value not exceeding EUR 150, and (ii) the supply of goods within the Community by an underlying supplier not established within the Community to a non-taxable person.

In the case of distance sales of imported goods ("DSIG"), it does not matter whether the underlying supplier is based in the EU or outside it. However, it is important that the consignments are delivered from a third country/territory and that the value of the consignments does not exceed the actual value of EUR 150. This value was adopted in the EU due to the fact that the threshold of EUR 150 is the value up to which goods benefit from a relief from customs duty, meaning that only VAT is due on these consignments.[37] However, it should be noted that this situation may change and the EUR 150 threshold may be abolished, which would mean that the deemed supplier regime would cover a much larger volume of transactions[38].

The supply of goods within the Community refers to both domestic deliveries and intra-Community distance sales of goods, defined in Article 14(4)(1)[39] of the VAT Directive (EU deliveries). In this case the goods should already be located within the EU's territory or have been introduced into circulation there. Contrary to the DSIG facilitated by EIs, the value of EU deliver-

37 European Commission. Directorate General for Taxation and Customs Union. i in., *VAT in the digital age: final report. Volume 3, Single place of VAT registration and import one stop shop*., Publications Office, LU 2022, p. 16.

38 On May 17, 2023, EC published a proposal for changes in this regard. The Commission plans for these changes to come into effect only on March 1, 2028. Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT, COM/2023/262 final, 17.05.2023, www.eurlex.eu.

39 It is worth noting that this provision may change as of January 1, 2025, and intra-Community distance sales of goods will additionally include the second-hand goods, works of art, collectors' items and antiques. European Commission, *Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards VAT rules for the digital age*, COM/2022/701 final, op. cit.

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ies is not a determining factor. It should be also emphasized that EI will only attain the status of a deemed supplier if its underlying supplier is established outside of the EU.

It can be observed that transactions covered by the DS e-commerce model are related to third countries. In the case of DSIG, goods must be imported into the Community from third countries and in the case of EU deliveries, the underlying supplier should be based in a third country. It seems that the main purpose of shaping the regulations in this way was to improve level playing field for sellers from the EU and outside the EU. However, it should be noted that the VIDA reform provides for the removal of the requirement for the underlying supplier to be based in a third country from Article 14a (2) of the VAT Directive. The extended scope of the deemed supplier regime will therefore cover all deliveries of goods within the EU carried out via an EI, regardless of where the underlying supplier is based. This modification highlights that the primary focus of the deemed supplier regime in this context will be primarily on enhancing the efficiency of VAT collection, rather than solely on leveling the playing field for sellers from the EU and non-EU countries.

It is noteworthy that the EU legislator has planned additional amendments that will considerably broaden the scope of the DS e-commerce model. The requirement for the service recipient not to be a VAT taxable person is planned to be abolished for the EU deliveries (amendment to Article 14 (2) of the VAT Directive[40]). Consequently, in the future, the deemed supplier regime could encompass all deliveries of goods within the European Union, irrespective of the recipient's status (encompassing both B2B and B2C transactions). However, the draft legislation provides for one exception. According to the proposed Article 14a (4) of the VAT Directive[41], if EI established only in one Member State facilitates supplies of goods only in that Member State without dispatch or transport, or with dispatch or transport which begins and ends in that Member State, that EI shall not be deemed to have received and supplied those goods. Thus, it appears that local EIs facilitating only domestic sales of goods would be exempt from the deemed supplier regime. Furthermore, the deemed supplier regime could cover certain transfers of own goods that are facilitated via an EI (as proposed in Article 14a (3) of the VAT Directive[42]).

The considered extension of the deeming provision of Article 14a of the VAT Directive has gained preliminary approval from the doctrine, because it creates an efficient and fair collection of VAT and downsides seem minimal.[43]

The DS service model, in contrast to the DS e-commerce model, encompasses only specific types of services (it does not apply to the delivery of goods). According to the planned

40 *Ibidem.*

41 *Ibidem.*

42 *Ibidem.*

43 M. Merkx, *Platform liability: an efficient and fair collection model for VAT?* [in:] VAT challenges and opportunities in the new digital economy, Madrid VAT Forum Foundation 2022, p. 29.

Article 28a of the VAT Directive, the deemed supplier regime applies if EI facilitates the supply of STR or ride services.

In the case of STR services, the EU legislator refers to Article 135(3) of the VAT Directive. According to this article (which also currently has the status of a draft), it is considered that the uninterrupted rental of accommodation for a maximum of 45 days with or without the provision of other ancillary services shall be regarded as having a similar function to the hotel sector. The approach chosen by the EC, based solely on the time criterion (45 days), should be positively evaluated- it seems easy to apply and enforce in practice. However, it means that STR services will be excluded from VAT exemption under Article 135(1)(l) of the VAT Directive (according to which the leasing or letting of immovable property is exempt from VAT). At present, certain Member States grant exemptions for STR services while others do not.[44] Given these discrepancies, the proposed solution has been welcomed by legal doctrine.[45] Nevertheless, achieving consensus at the EU level regarding this proposal appears to be a formidable challenge.[46]

With regard to ride services, the EU legislator has not decided to provide a precise definition of such transport, resulting in the necessity to rely on national definitions in this regard. In addition, by indicating that transport must be of a "passenger" nature, the Commission has excluded popular platform-based food and beverage delivery services. As noted within the literature, the use of the term "passenger transport" can also cause a presumably inadvertent inclusion of EIs operating outside platform economy sectors (for example, it can cover EIs facilitating the supply of international airplane (or maritime) passenger transport because these services can be provided by non-resident suppliers (e.g. airlines) who need not be VAT registered in the EU)[47].Consequently, a potential refinement of the scope of covered passenger transport services may be necessary to ensure that other passenger transport EIs are not inadvertently "caught in the net".[48]

2.2 Nature of underlying transaction

Considering the prevailing language of Article 14a of the VAT Directive, it should be noted that the DS e-commerce model only covers transactions of a B2C nature (the underlying supplier must be a VAT taxable person, while the purchaser of goods must not possess such status). These transactions, even prior to the implementation of the deemed supplier regime, were essentially subject to VAT, with the key difference being that the responsibility for their settlement lay with the underlying suppliers rather than EIs.

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44 European Commission. Directorate General for Taxation and Customs Union. i in., *VAT in the digital age, op. cit*., p. 113–114.

45 N. Čičin-Šain, *Newly proposed VAT rules for sharing economy platforms – some fine-tuning needed?*, https://kluwertaxblog.com/2023/03/22/newly-proposed-vat-rules-for-sharing-economy-platforms-some-fine- tuning-needed/, accessed 4 April 2023.

46 F. Matesanz, *IVA la vida. Primera parte. IVA y economía colaborativa*, https://www.legaltoday.com/opinion/blogs/fiscal-y-legal/blog-sobre-tributacion-indirecta/iva-la-vida-primera- parte-iva-y-economia-colaborativa-2023-01-02/, accessed 23 March 2023.

47 N. Čičin-Šain, *Newly proposed VAT rules for sharing economy platforms – some fine-tuning needed?, op. cit.*

48 *Ibidem.*

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In contrast to the DS e-commerce model, the DS service model encompasses transactions that have so far remained outside the scope of VAT taxation. These transactions can be broadly described as C2C and C2B transactions, or more precisely as transactions involving entities that, for various reasons, do not charge VAT (and whose catalog is indicated in the proposed Article 28a of the VAT Directive) for the service recipients who can either be VAT taxable persons or individuals without such status.

According to the proposed Article 28a of the VAT Directive, the underlying suppliers will exclusively consist of entities that currently fall outside the EU VAT system. These include: (a) non-established persons who are not identified for VAT purposes in a Member State and (b) non-taxable persons. Additionally, it encompasses entities belonging to the so-called "Group of Four"[49]: (c) taxable persons carrying out supplies of goods or services for which VAT is not deductible, (d) non-taxable legal persons, (e) taxable persons subject to the common flat-rate scheme for farmers, and (f) taxable persons subject to the special scheme for small enterprises ("SMEs").[50] All of these entities, (a) to (f), will be further referred to as the "Group of Six." The catalog of underlying suppliers within the Group of Six is closed, meaning that if the underlying services are provided by entities outside the Group of Six (primarily taxable persons subject to standard VAT taxation), EI will not qualify as a deemed supplier in such cases.

As explained by the EC, until recently, the Group of Six was not considered to have any impact on market competition with VAT-registered businesses. However, the emergence of new business models within the platform economy has altered this landscape. The Group of Six can now provide their VAT-free services through EI and, leveraging economies of scale and network effects, directly compete with traditional VAT-registered suppliers. Simultaneously, the independent collection of VAT by the Group of Six would be burdensome (e.g., in the case where the underlying supplier is a natural person) or it may be secure to collect VAT through the intermediary EI (e.g., when the underlying supplier is located outside the EU).[51]

Such shaping of the DS service model raises concerns regarding the neutrality of the proposed solutions. In this model, when a member of the Group of Six engages in business activities by providing services through EI such transactions will be liable to VAT. Conversely, if the same entity chooses not to utilize EI's intermediation, the services it provides will remain outside the scope of VAT taxation. Consequently, the envisaged form of the deemed supplier regime introduces disparate treatment for identical service provisions by the same underlying suppliers,

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49 European Commission. Directorate General for Taxation and Customs Union. i in., *VAT in the digital age, op. cit*., p. 105–106.

50 It is important to note that taxable persons belonging to the Group of Four are included to prevent the risk of arbitrage once the deemed supplier system is implemented. This ensures that the provision is more future-proof and aligns with the main objective of achieving VAT equality and neutrality, rather than solely improving VAT compliance. Ibid., p. 106.

51 European Commission, Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards VAT rules for the digital age, COM/2022/701 final, op. cit.

solely based on their choice of intermediation channel.

This approach appears to be inconsistent with the broad taxation principles advocated by the OECD for electronic commerce: *"Taxation should seek to be neutral and equitable between forms of electronic commerce and between conventional and electronic forms of commerce. Business decisions should be motivated by economic rather than tax considerations. Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation."*[52]

However, it can also be argued that the current situation does not promote equality and disrupts competitiveness between conventional and electronic forms of commerce. As highlighted in literature, the position of sellers using EIs is not comparable to that of sellers operating within the traditional economy- EI enables its sellers to access a large market with minimal effort, what is not possible in the traditional market.[53] Moreover, when considering the fundamental nature and objective of VAT taxation, which is to tax private consumption, the inclusion of C2C transactions within the scope of taxation can be regarded as a positive step.[54] Thus, it can be argued that the inclusion of C2C and C2B transactions in the VAT system does not significantly impact a neutral VAT collection model. Nevertheless, this is a controversial view.

2.3 Presumptions of the status of the underlying suppliers and purchasers

Both the DS e-commerce model and the DS service model require EI to determine the VAT status of the underlying supplier and the purchaser. To provide EIs with greater legal certainty and to relieve them of the disproportionate burden associated with verifying the status of their users, the Commission has decided to establish presumptions in this regard.

In the case of the DS e-commerce model, in accordance with Article 5d of IR, EI deemed as a supplier, unless it has information to the contrary, recognizes: (i) the person selling goods through EI as a taxable person (presumption of supplier status), and (ii) the person buying those goods as a non-taxable person (presumption of purchaser status).

For the DS service model, the presumptions proposed by the European Commission are somewhat more complex. In the case of the presumption for the underlying supplier, according to the planned Article 9c of IR, the deemed supplier regime will apply where the underlying supplier does not provide EI with a valid VAT identification number. It is worth noting that the Group

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52 OECD, *Electronic Commerce: Taxation Framework Conditions. A Report by the Committee on Fiscal Affairs, as presented to Ministers at the OECD Ministerial Conference, "A Borderless World: Realising the Potential of Electronic Commerce"* 8 October 1998, www.oecd.org.

53 M. Merkx, *Platform liability: an efficient and fair collection model for VAT?, op. cit.*, pp. 25–26.

54 C2C transactions remain untaxed for efficiency purposes, because including those transactions in the VAT system would create excessive compliance and administrative burdens. Ibid., p. 26.

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of Four includes entities that may possess a VAT number[55]. Consequently, there is a risk that the underlying suppliers, who possess a VAT number, may provide it to EI without declaring their membership in the Group of Four. The second paragraph of the planned Article 9c of IR refers to this situation. According to this provision, if the underlying supplier has a VAT identification number and simultaneously belongs to the Group of Four, such VAT identification number shall not be communicated to EI. However, the EU legislator has not envisaged any consequences for underlying suppliers who fail to comply with this prohibition in the proposed regulations. In addition, as rightly pointed out in the doctrine[56], the wording of the planned Article 9c paragraph 2 of IR appears to be in contradiction with the obligation to communicate the VAT number to EIs imposed by other rules, such as the current Article 55 of IR[57] and DAC 7[58]. Consequently, it seems that this issue should be appropriately clarified by the EU legislator.

It is also worth noting that in practice, a significant challenge may arise in determining the actual identity of the underlying supplier, particularly for platforms operating in the STR sector. One of the key challenges in this area is the lack of reliable information about the identity of the host. For example, a problematic situation can arise when the host, in order to manage his property, engages a professional intermediary, and instead of providing the host's data, this intermediary provides its own data to the platforms. As a result, platforms may not always have accurate information about the real identity of the host. In addressing this issue, reference to the planned regulation on data collection and sharing related to short-term accommodation rental services (assuming it comes into effect) could be helpful[59]. This Regulation stipulates that hosts should provide information about themselves, the units they offer for STR services, and other necessary details to the competent authorities, who will assign a unique identifier to each rented unit. Subsequently, hosts should be required to provide their registration numbers to online STR platforms, display them in their respective unit listings, and provide guests with the registration number of the unit (platforms should remove listings related to units offered without a registration number or with an invalid registration number). However, it is important to note that this Regulation is not

55 For example, in some Member States the taxable persons covered by the SME schemes are identified for VAT purposes. European Commission. Directorate General for Taxation and Customs Union. i in., VAT in the digital age, op. cit., p. 111–112.

56 N. Čičin-Šain, *Newly proposed VAT rules for sharing economy platforms – some fine-tuning needed?, op. cit.*

57 This provision necessitates that taxable persons and non-taxable legal persons who are responsible for accounting for VAT based on Article 196 of the VAT Directive (reverse charge) in relation to services received, must convey their VAT number to their service provider.

58 Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, ST/12908/2020/INIT, OJ L 104, 25.3.2021, p. 1–26. The DAC7 directive mandates Reporting Platform Operators to collect VAT numbers from their Reportable Sellers when they provide, inter alia, rental of immovable property or rental of any mode of transport.

59 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on data collection and sharing relating to short-term accommodation rental services and amending Regulation (EU) 2018/1724, COM(2022) 571 final, 7.11.2022, www.eurlex.eu.

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intended to ensure compliance with customs or taxation rules. Therefore, any potential future use of personal data processed under the regulation for law enforcement or taxation and customs purposes is excluded. This raises interpretational concerns about whether a platform can utilize the provided registration number to fulfill its obligations correctly as a deemed supplier under EU VAT rules. Therefore, clarification of this issue by the EC would be desirable.

In contrast to the DS e-commerce model, the DS service model encompasses transactions where the purchaser may be either a VAT taxable entity or an entity lacking such status. Nevertheless, the status of the recipient of underlying services remains an important consideration within this model. EI must ascertain whether the service recipient is a VAT taxable person, as this determination impacts the way in which VAT is settled on the underlying service (e.g., the status of the buyer may determine whether the EI can declare sales through the special one-stop-shop procedure[60]). Consequently, the EU legislator has proposed a presumption of purchaser status by which EIs can easily determine the status of service recipients. According to the planned Article 9e of IR, unless EI has information to the contrary, it shall regard the person to whom those services were supplied as a non-taxable person where that person to whom those services were supplied does not provide a VAT identification number. Thus, the EI should presume that the purchaser is a taxable entity if a VAT number has been provided and that they lack such status if this number has not been provided.

60 European Commission, *Group on the Future of VAT. GFV NO 122. VAT and the platform economy –focus on specific issues –follow up*, taxud.c.1(2022)3461477, 25.04.2022, www.circabc.eu.

3. Comparison of the method of operation

The mechanisms of operation for both the DS e-commerce model and the DS service model are very similar. In both cases a single transaction from an underlying supplier selling goods or providing services through EI is divided into two supplies: (i) the supply from the underlying supplier to EI (it is assumed that EI "acquires" goods or services from the underlying supplier), and (ii) supply from EI to the final recipient (it is assumed that EI "resells" goods or services to the purchaser). Thus, there is a fiction of two consecutive transactions, one between the actual supplier and EI, and another between EI and the final recipient. This fiction is limited solely to VAT tax obligations and should not affect any other aspects of EI liability, such as civil law liability.

In the DS e-commerce model, the first transaction between the underlying supplier and EI is classified as a B2B supply without transport (Article 36b of the VAT Directive). For distance sales of imported goods valued at or below 150 euros, the supply occurs outside of EU territory and is consequently not subject to EU VAT regulations. If the supply of goods takes place within the EU, it is exempt from VAT and the underlying supplier has the right to deduction, as outlined in Articles 136a and 169(b) of the VAT Directive.

In the DS service model, the first transaction between the underlying supplier and EI is exempt from VAT. However, unlike the DS e-commerce model, there is no right to deduction (as proposed in Article 136b of the VAT Directive). This solution poses some challenges with respect to the principle of neutrality, as the services of the underlying suppliers would be subject to VAT, but suppliers would not be able to deduct input VAT on costs related to these services[61]. The lack of a right to deduct VAT for the underlying supplier leads to an accumulation of VAT[62]. Various strategies have been proposed in doctrine for removing non-

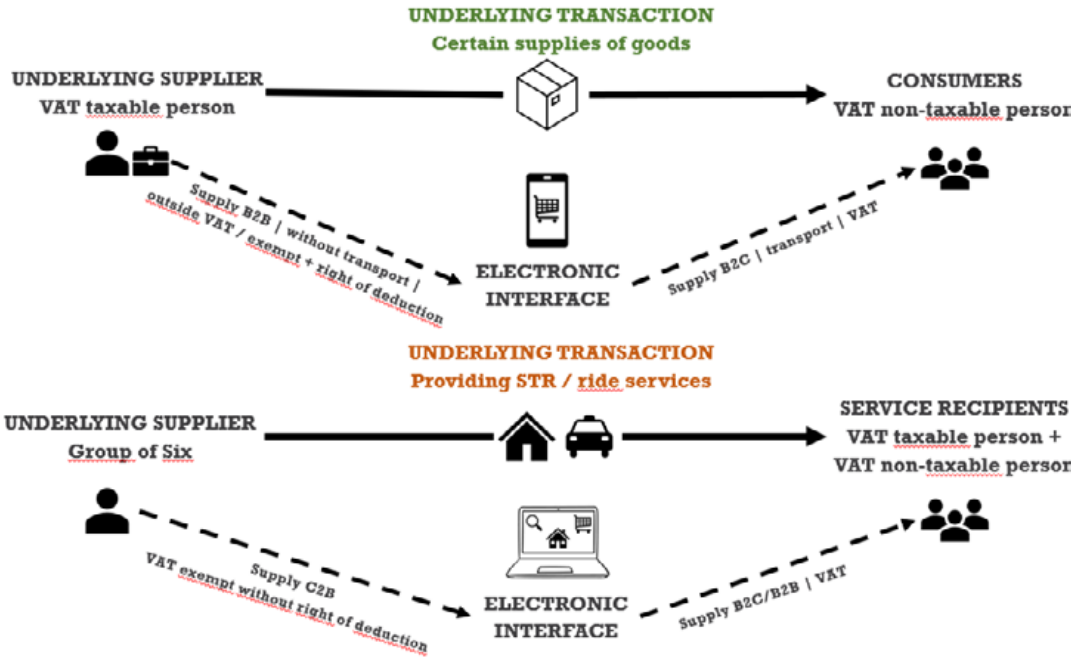
61 Representatives of entrepreneurs have pointed out this risk: BusinessEurope, *VAT in the digital age – BusinessEurope reply to the public consultation*, https://www.businesseurope.eu/publications/vat-digital-age- businesseurope-reply-public-consultation, accessed 9 May 2023.

62 M. Merkx, *Platform liability: an efficient and fair collection model for VAT?, op. cit.*, p. 26.

deductible VAT amounts and thus avoiding VAT cascading. However, the EU legislator has not adopted any of them.[63]

In both the DS e-commerce and service models, the second transaction (from EI to the purchaser) is a VAT-taxable supply. In the case of the DS e-commerce model, transport is allocated to this supply.

Figure 1: Comparison of the method of operation for the DS e-commerce and DS service models



63 To remove non-deductible input VAT and avoid VAT cascading, several strategies can be developed: (1) zero-rating the underlying transaction, i.e., exempting it but allowing the individual supplier to deduct their input VAT;

(2) introducing a reduced rate for output transactions made by platforms to compensate for the inability to deduct any VAT on inputs used by individual suppliers in providing accommodation or passenger transport services; or

(3) enacting a flat-rate input VAT compensation scheme, whereby platforms can deduct a predetermined amount of input VAT calculated based on account statistics for the specific sector considered, averaged over a certain number of years. It is worth noting that none of these strategies are without drawbacks. G. Beretta, *European VAT and the sharing economy, op. cit.*, p. 314.

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4. Overview

The following table provides a concise comparison of the structure and key features of the DS e-commerce model and DS service model.

Table 1: The comparison of the DS e-commerce and DS service models.[64]

	DS E-COMMERCE MODEL	DS SERVICE MODEL
General provisions	Article 14a VAT Directive.	Article 28a VAT Directive (project).
Specific provisions	Articles 31–33, 36b, 66a, 136a, 169, 205, 219a–221, 242, 242a VAT Directive and articles 5b, 5c, 5d, 41a, 54b, 54c, 63c 282 IR.	Articles 46a, 135 point 3, 136b, 172a, 242a, 306 VAT Directive (project) and articles 9b-9e IR (project).
Aims	Improving and facilitating the collection of VAT in specific situations.	Ensuring effective and efficient collection of VAT.
	Reducing the administrative burden for vendors, tax administrations and consumers.	Not imposing a burden on the underlying suppliers operating through the platform.
	Avoiding distortion of competition between suppliers inside and outside the Community and avoiding losses of tax revenue.	Ensuring a level playing field between platforms offering services and other traditional suppliers qualifying as taxable persons.
SUBJECTIVE SCOPE		
Taxable persons	Operators using an EI such as a marketplace, platform, portal, or similar means.	Operators using an EI such as a platform, portal, or similar means.
Activity	Facilitating certain types of delivery of goods.	Facilitating the provision of certain types of services.
	Article 5b IR: "facilitates" means the use of an EI to allow a customer and a supplier offering goods for sale through the EI to enter into contact which results in a supply of goods through that electronic interface.	**Article 9b IR:** "facilitates" shall mean the use of an EI to allow a customer and a supplier offering supplies of STR or ride services through the EI to enter into contact, which results in a supply of those services through that electronic interface.

64 Please note that the table above provides a summary comparison and does not encompass all the nuances and complexities associated with the DS e-commerce model and DS service model.

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Excluded activity (3 conditions must be cumulatively fulfilled)	EI does not set, either directly or indirectly, any of the terms and conditions under which the supply of goods is made.	EI does not set, either directly or indirectly, any of the terms and conditions under which the supply is made.
	EI is not, either directly or indirectly, involved in authorizing the charge to the customer in respect of the payment made.	EI is not, either directly or indirectly, involved in authorizing the charge to the customer in respect of the payments made.
	EI is not, either directly or indirectly, involved in the ordering or delivery of the goods.	EI is not, either directly or indirectly, involved in the provision of those services.
Excluded EI	EI who only provides the processing of payments in relation to the supply of goods.	EI who only provides the processing of payments in relation to the supply of STR or ride services.
	EI who only provides the listing or advertising of goods.	EI who only provides the listing or advertising of STR or ride services.
	EI who only provides the redirecting or transferring of customers to other EI where goods are offered for sale, without any further intervention in the supply.	EI who only provides the redirecting or transferring of customers to other EI where STR or ride services are offered for sale, without any further intervention in the supply.
Safe harbor rules	**Article 5c IR:** EI shall not be held liable for the payment of VAT in excess of the VAT which he declared and paid on these supplies where all of the following conditions are met:	**Article 9d IR:** where, on the basis of information supplied by the person providing the underlying service, EI does not act as the deemed supplier, that EI shall not be held liable for the payment of the VAT due should it be subsequently found that that EI should have been deemed to be the supplier, where all of the following conditions are met:
	• EI is dependent on information provided by suppliers selling goods through an EI or by other third parties in order to correctly declare and pay the VAT on those supplies.	• EI is solely dependent on information provided by the supplier of the services.
	• This information is erroneous.	• The information so provided is erroneous.
	• EI can demonstrate that he did not and could not reasonably know that this information was incorrect.	• EI can prove that he did not and could not reasonably have known that this information was erroneous.
OBJECTIVE SCOPE		

Type of underlying transactions	Distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150.	STR (the uninterrupted rental of accommodation for a maximum of 45 days with or without the provision of other ancillary services).
	Supply of goods within the Community by a taxable person not established within the Community to a non- taxable person.	Passenger transport services.
Nature of underlying transactions	B2C	C2C, C2B

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Determining the status of EI users	UNDERLYING SUPPLIER **Article 5d IR:** Unless he has information to the contrary, EI shall regard the person selling goods through EI as a taxable person.	UNDERLYING SUPPLIER **Article 9c IR:** The deemed supplier regime shall apply where the underlying supplier does not provide EI with a valid VAT identification number. Where the underlying supplier has a VAT identification number and is a member of the "Group of Four", that VAT identification number shall not be communicated to EI.
	CONSUMER **Article 5d IR:** Unless he has information to the contrary, EI shall regard the person buying those goods as a non-taxable person.	CONSUMER **Article 9e IR:** Unless EI has information to the contrary, EI shall regard the person to whom those services were supplied as a non-taxable person where that person does not provide a VAT identification number.
METHOD OF OPERATION		
Basic rules	A fiction of two consecutive transactions, one between the actual supplier and EI, and another between EI and the final recipient. 1. B2B supply without transport (outside the scope of VAT / exempt with right to deduct) 2. B2C supply with transport, VAT taxable.	A fiction of two consecutive transactions, one between the actual supplier and EI, and another between EI and the final recipient. 1. C2B supply (VAT exempt without right to deduct. 2. B2C or B2B supply, VAT taxable.

In general, the concept and operational principles of both discussed deemed supplier models exhibit significant similarities. However, they do differ in specific design details, primarily associated with the distinct nature of supplies facilitated by EIs - the DS e-commerce model pertains to the supply of goods, whereas the DS service model focuses on the provision of services. These transactions are treated differently within the framework of the EU VAT system, necessitating a differentiation in the deemed supplier regime. Notwithstanding these details, both models exhibit a fundamental difference – the DS service model results in services facilitated by EI becoming subject to VAT, unlike the DS e-commerce model where transactions are already subject to VAT regardless of the regime. The reason behind this difference is the aim of introducing the DS service model, which is to create a fair competition between VAT- paying entrepreneurs in traditional STR and passenger transport sectors, and entities that, although not obliged to pay VAT, become their competitors by using platforms.

It is uncertain whether the current form of the DS service model will fulfill its intended purpose. While it is challenging to predict the outcome, there are specific concerns in this regard within the STR sector. It should be noted that research results do not unequivocally determine the negative impact of the platform economy on the traditional hotel industry. On the one hand, it is pointed out that platforms such as Airbnb provide a viable, but imperfect, alterna-

tive for certain traditional types of overnight accommodation (especially for lower-end hotels and hotels not catering to business travelers) on some markets[65], and as a result, the traditional hotel industry should treat platform offers as competitive[66]. However, on the other hand, platforms and traditional hotels do not offer exactly the same services. Case studies indicate that despite the presence of price competition, traditional accommodation providers have not been significantly affected by the offers of accommodation platforms and the appeal of STR or home exchanges does not appear to discourage travelers from choosing hotels[67]. Instead of being in direct competition, the study suggests that there are complementary aspects between platform and traditional STR options; in areas where tourism supply and demand are lower, accommodation platforms can supplement traditional options to some extent.[68]

It is important also to highlight that while shifting the responsibility for VAT settlement to EI operators generally enhances VAT compliance, it may not necessarily simplify the tax compliance process for the platforms themselves. As highlighted in the literature, while major platforms already have full control over the underlying supplies, the deemed supplier regime will impact those platforms whose business models do not entail such a high level of control[69]. It is worth noting that in the platform economy, early entrants become dominant market leaders due to rapid scalability, making it difficult for new firms to enter[70]. This could potentially restrict the ability of new innovators to successfully compete in this market and limit consumer choice[71]. However, both models of the deemed supplier regime treat all EI operators equally, whether they are large or small digital platforms. Since the cost of compliance with the deemed supplier provisions appears to be high, smaller EIs operators may struggle to fulfill the imposed obligations. This could potentially affect their competitiveness compared to larger platforms. Therefore, it seems that the deemed supplier regimes should have imposed more proportionate obligations, either excluding smaller platform operators from their scope or making this regime optional for them. This would encourage innovation and growth for smaller platforms in the digital economy.

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65 G. Zervas, D. Proserpio, J.W. Byers, *The Rise of the Sharing Economy: Estimating the Impact of Airbnb on the Hotel Industry*, „Journal of Marketing Research" vol. 54, no. 5, 2017, p. 704.

66 K.L. Xie, L. Kwok, *The effects of Airbnb's price positioning on hotel performance*, „International Journal of Hospitality Management", October 2017, vol. 67, p. 182.

67 European Commission. Directorate General for Internal Market, Industry, Entrepreneurship and SMEs., VVA., Spark Legal Network, *Study on the assessment of the regulatory aspects affecting the collaborative economy in the tourism accommodation sector in the 28 Member States (580/PP/GRO/IMA/15/15111J): final report*, Publications Office, LU 2018, p. 41–43.

68 *Ibidem.*

69 M. Lamensch, M. Merkx, J. Lock, A. Janssen, *European Union/International - New EU VAT-Related Obligations for E-Commerce Platforms Worldwide: A Qualitative Impact Assessment, op. cit*., p. 459–460.

70 M. Hossain, *Sharing economy: A comprehensive literature review,* „International Journal of Hospitality Management", May 2020, vol. 87, p. 8.

71 European Council, *Council conclusions on shaping Europe's digital future*, OJ C 2021, 16.6.2020, p. 1–12, www.eurlex.eu.

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It is important to note that while the engagement of third parties in the tax collection process does not constitute penalties or any form of sanctions (as it is integrated into the design of tax systems as standard collection measures), these responsibilities may however, imply a significant tax liability implications- they are often accompanied by sanctions and may also entail liability for breaching an increasing number of formal obligations, such as filing returns and reporting data[72]. The literature suggests that it is crucial to consider whether the collective interest in ensuring the effective payment of taxes justifies involving third parties in the tax collection process, without further assessment of the potential impact on these third parties[73]. Therefore, it appears that transferring excessive responsibility for monitoring the VAT tax system to private entities, such as platforms, should not be done without considering whether it represents a proportionate means to achieve the intended objectives.

72 P. Baker, P. Pistone, K. Perroun, *Third-Party Liability for the Payment of Taxes and Their Fundamental Rights*, "World Tax Journal" 2023, no. 2, p. 86.

73 Ibid., p. 93.

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5. Conclusions

In summarizing, the analyzed article compares two models of the 'deemed supplier' regimes in the EU VAT system specifically designed for EIs: the e-commerce and service models. The goal of both of them is to improve VAT compliance by making platforms liable for VAT collection, but the details and focus of their operations vary.

The e-commerce model, regulated under Article 14a of the VAT Directive, primarily targets transactions related to third countries with an aim to level the playing field for sellers from both inside and outside the EU. Future amendments plan to broaden its scope to cover all deliveries of goods within the EU, regardless of the recipient's status and location of underlying suppliers. Importantly, the role of the e-commerce model is to transfer VAT liabilities onto platforms for transactions that are already subject to VAT.

In contrast, the services model, regulated under the proposed Article 28a of the VAT Directive, targets specific types of services (STR and passenger transport). The service model deems transactions that are outside VAT to become taxable due to their provision through short-term rental and ride service EIs. This raises justified doubts as to the neutrality of these solutions.

The deemed supplier regimes should be designed to ensure proportionality and should not unduly burden, particularly, the smaller platforms. Furthermore, transferring significant VAT responsibilities onto platforms should consider its impact on these platforms and whether it effectively achieves the intended objectives.

It can be concluded that the application of deemed supplier regimes potentially curb competition and innovation, warranting further examination for its long-term effects.

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Comparing deemed supplier regimes: e-commerce and short-term rental/passenger transport platforms in the EU VAT system

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