VAT in the digital age: the platform economy for services

Indirect Tax | Management of taxes | International Tax



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We summarise the VAT issues identified with the platform economy and the changes proposed from 1 January 2025 aimed at resolving those issues.

Key Points

What is the issue?

The proliferation of technology and digitalisation has resulted in the significant growth of intermediaries, causing problems for tax authorities around the world, especially with VAT.

What does it mean for me?

In July 2022, the European Commission published a report, ‘VAT in the digital age’ focused on the VAT treatment of the platform economy in e-commerce, transport

and accommodation.

What can I take away?

Whilst the proposals allow for platforms to be excused the need to pay VAT in certain circumstances, the aim is to collect VAT through making the intermediary a deemed supplier responsible for accounting for VAT due, unless the role of the platform is limited and they are not in direct competition with the non-digital sectors.

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Over the last decade, the proliferation of technology and digitalisation has led to a rapid transformation of the economy. This is particularly evident in the sharing and new economies where businesses and consumers interact in new ways, and in relation to new services. This has resulted in the significant growth of intermediaries in various supply chains, often referred to as the platform economy.

This level of transformation has been causing myriad problems for tax authorities around the world, as they try to keep up with ways of doing business that did not exist when legislation was drafted. Perhaps the most affected tax is VAT, being a tax on consumption.

One of the first major changes was the Directive on Administrative Cooperation (DAC7), which introduced the requirement for many platform-based intermediaries to maintain and submit reports of sales made on behalf of third parties to EU tax authorities. These new requirements were effective from 1 January 2023, with the first reports due from 1 January 2024.

On 8 December 2022, the European Commission proposed VAT changes to supplies, via intermediaries or platforms, of short-term accommodation and passenger transport. Subject to agreement at the Council of the EU, this should be effective from 1 January 2025. Even though this is EU legislation, all businesses involved in the supply chain for these supplies are potentially affected. For platforms or intermediaries directly impacted, these changes could mean:

- the introduction of digital reporting in relation to relevant sales across EU state borders;

- VAT registration and accounting requirements for relevant intermediaries;
- an extension of the sales captured by the one-stop-shop for VAT; and
- a need to review pricing models, due to the deemed suppliers' obligation to account for VAT on the supplies.

Background to the proposals

In July 2022, the European Commission published a report, VAT in the digital age (see bit.ly/3RPpu2O). Volume 2 focused on the VAT treatment of the platform economy in the following sectors:

- e-commerce, i.e. those sectors providing a marketplace for goods, such as Amazon and Facebook Marketplace;
- transport services, including ride on demand, ride sharing, car sharing, delivery services and trip booking, such as Uber and GetAround; and
- accommodation services, including residence renting, home sharing or swapping and B&Bs or hotels, such as Airbnb and Couchsurfing.

This report identified that the existing EU VAT rules are unclear and not harmonised. Particular problems were identified in relation to:

- the taxable status of the provider;
- the nature of services and place of supply; and
- reporting and record keeping obligations.

It was also highlighted that other EU measures relevant to the platform economy need to be taken into consideration when introducing changes, including the VAT e-commerce package, DAC7, the Digital Services Act and the Digital Markets Act.

Existing legal issues

The EC report sets out the main legal issues relating to the VAT Directive, which also apply to national legislation.

The taxable person status of the provider and the user

Determining the status of the parties involved in the transactions is crucial. The taxable status problem refers to the difficulty in determining the taxable status of the platform's users and, specifically, of providers. This is crucial for determining the

tax obligations of the provider of services or goods underlying the platform's facilitation.

The difficulty in determining the status of the provider stems from problems with the concept of 'economic activity'. Establishing that the provider is a taxable person will not only mean that the platform should issue an invoice for its facilitation services but may also affect where these services should be taxed. In cross-border transactions, the taxable status of the provider defines who is liable to pay VAT and whether the reverse charge mechanism applies.

The nature of the service

The nature of the service provided by the platform and the resulting place of supply differs from traditional intermediation. This is because it is typically provided via automated means, over the internet. As a result, it may not fit into the definition of 'services' in the VAT Directive.

Form of consideration

Consideration in the platform economy may be indirectly linked to a service or have a non-monetary character. This makes it challenging to define the consideration for VAT purposes.

Other legal issues

Other issues include:

- the deduction of input VAT and the adjustment of deduction; and
- the special schemes for SMEs that remove the need for VAT registration for micro taxpayers to simplify their compliance.

EU commission proposals

Under the proposals announced on 8 December, the 'platform' will be the deemed supplier for certain supplies; namely, short-term accommodation rental and passenger transport. This will be combined with changes to the core exemptions in the EU VAT Directive 2006/112 to clarify that short-term accommodation rental is excluded from the land and property exemptions and so is a taxable supply.

The changes will be implemented by amending the following Articles in Directive 2006/112:

- Article 28a: introducing the deemed supply of the underlying service by the intermediary;
- Article 46a: confirming that supplies by an intermediary to a non-taxable person are not electronically supplied services, meaning that they are taxed where the underlying supply takes place;
- Article 135(3): excluding the supply of short-term rental accommodation from the land exemptions, thereby making it a taxable supply;
- Article 136b: confirming no entitlement to VAT recovery by the 'supplier' to the platform where it is a deemed supply;
- Article 172a: confirming that the deemed supply does not impact the VAT recovery entitlement for the platform as a deemed supplier;
- Article 242a: introducing new reporting requirements for platforms where they are not the deemed supplier; and
- Article 306: confirming that the Tour Operators Margin Scheme (TOMS) does not apply to the deemed supplies.

The effect of the proposals

The changes will apply where electronic interfaces allow consumers to book accommodation or transport services where the intermediary is not itself the principal in the actual supply of those services. The Commission's report suggests that these changes could capture up to €6 billion additional VAT each year. This could be from the underlying suppliers, intermediaries or others in the supply chain. To capture this VAT, the proposal makes the intermediaries the 'deemed' supplier of the short-term rental accommodation or passenger transport.

The intermediary will be responsible for the collection and remittance of VAT on the payments received from consumers in cases where the actual underlying supplier will not be accounting for VAT on the full amount. This could either be because the underlying supplier is not VAT registered or required to be VAT registered, or because the underlying supplier is VAT registered under a small business or private person exemption. This would apply where the underlying supplier is exempt from accounting for VAT under local EU member state legislation; for example, if they are below the French VAT registration threshold for small bed and breakfast businesses.

VAT will be payable in the member state in which the accommodation is situated or the passenger transport takes place, and is due at the rate applied in that state. Some member states have an exemption for short-term accommodation rental, and it is proposed that these exemptions should be withdrawn.

In addition, intermediaries that are not ‘deemed’ to be making the supply will be responsible for collating and submitting to EU tax authorities’ details of the underlying suppliers and the sales made. This would apply where the underlying supplier is VAT registered, for example. This follows the existing rules for similar ‘platform’ based businesses involved in the supply of goods and is in line with DAC7 provisions.

The combined impact of these changes will mean more VAT in the supply chain and more complex VAT compliance requirements. This will affect both owners and suppliers, as well as the intermediaries and platforms.

Further clarification

Although the proposed changes are very detailed, there are still some areas that may require further clarification before they are finalised.

First, there is no definition of ‘platform’. The draft legislation refers merely to an ‘electronic interface such as a platform, portal or similar means’. The proposals confirm that platforms making such a deemed supply will not be allowed to account for VAT within the Tour Operators Margin Scheme (TOMS). At present, however, based on current CJEU case law, a platform making an actual supply of short-term accommodation rental or passenger transport may well be within TOMS currently. If this difference remains, it could create an incentive for platforms to change business model and become an actual supplier.

The platform will be deemed to supply the underlying service, and responsible for the payment of VAT, when it ‘facilitates’ a supply of short-term accommodation rental or passenger transport, ***and the service provider does not pay VAT on the service***. The assumption is that the provider is genuinely not liable to pay VAT under local legislation, rather than being liable but non-compliant. Hence, if the provider is non-compliant, the liability should remain with the provider and not the platform. However, this may need to be confirmed.

The proposals allow for platforms to be excused the need to pay VAT in certain circumstances; i.e. where the role of the platform is limited. The intention seems to be to exclude those which are not in direct competition with the traditional, non-digital sectors. However, the terms used do not clearly set out the circumstances in which the platforms are excused. Hopefully, these terms will become clearer as the proposals are considered over the coming months.

Finally, it is not unusual for changes of this nature in the EU legislation to be introduced in the UK. A means by which platforms selling untaxed UK accommodation and transport could contribute to the UK Exchequer might be a tempting prospect.