



Analysing the Efficiency of ViDA Proposal's

Article Two:

A Comprehensive Assessment of Challenges, Implementation Prospects and Proposal for Reforms.

Master's Thesis in International Business Taxation / LMM

Tilburg Law School, Tilburg University

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Supervisor: Prof. Dr. Gert-Jan van Norden

Academic Year: 2023/2024

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Research Question:

To what extent does Article Two of the ViDA proposal efficiently ensure the introduction of a level playing field between online and traditional providers while guaranteeing consistency with core VAT principles?

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Preface.

This thesis represents my newly discovered passion in the field of indirect taxation and marks the culmination of my LLM in International Business Tax Law. I have finally found the path I have long been seeking. I am incredibly grateful for all the feedback and the passion for this subject imparted to me by my supervisor, Gert-Jan van Norden, throughout these months of thesis writing and previously during lectures. His shared expertise has significantly improved my research question, allowing me to ask numerous questions and develop my opinion on this legislative proposal. I sincerely appreciate the guidance provided, which always allows me the freedom to express myself.

This year has marked an important milestone for me, one that would have been unimaginable without the support of my family, to whom I can never express enough gratitude. In particular, I would like to thank my parents, who have supported me in every way, believing in my ideas and my goals. They have always had faith in me and have always shown pride in every one of my achievements. Thank you for your daily support; despite the distance, I have always felt your presence.

I also want to thank my special companions on this journey, with whom I share a special bond and who have been essential in this process. They have taught me so much day after day and have made me feel at home. I am grateful to have met you.

I conclude this experience filled with satisfaction. I have grown and become more aware of all the wonders around me, and I am proud of the strong woman I have become.

Ad Maiora!

Abstract:

The Current legislative Proposal, commonly known as ViDA, aims to enhance, modernize, and improve the European Union's Value-Added Tax system for Businesses in the Digital Age. This initiative seeks to bolster resilience against fraud through embracing and promoting of digitalization. Article Two of the proposal is crafted to establish a level playing field between traditional and online short-term accommodation and passenger transport by road services. Furthermore, these measures will simplify processes for small and medium-sized enterprises required to comprehend and adhere to VAT regulations, mainly when conducting business across various Member States. However, the efficiency of this article in achieving its objective while remaining aligned with the fundamental principles of VAT is yet to be determined. Moreover, it is imperative to ascertain whether potential improvements could be introduced, considering not only the text of the European proposal itself but also the international landscape. Therefore, a thorough analysis is warranted to identify areas where adjustments may be necessary to optimize the proposal's efficiency and compatibility with EU legislation and global standards.

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List of Abbreviations

- **B2B** - Business to Business
- **B2C** - Business to Customer
- **C2C** - Customer to Customer
- **CJEU** - Court of Justice of the European Union
- **DRR** - Digital Reporting Requirements
- **ECOFIN** - Economic and Financial Affairs Council
- **EU** - European Union
- **GDP** - Gross Domestic Product
- **GST** – Goods and Services Tax
- **OECD** - Organisation for Economic Co-operation and Development
- **SMEs** - Small and Medium Enterprises
- **TOMS** - Tour Operator Margin Scheme
- **TFEU**- Treaty on the Functioning of the European Union
- **VAT** - Value Added Tax
- **ViDA** - Value Added Tax in the Digital Age
- **ZACTA** - the Zakat, Tax and Customs Authority

CHAPTER 1: Introduction.

1.1 VAT and Its Importance in the EU.

We live in an era of constant change. International integration has steadily expanded over decades, evidenced by the growth of global trade, increased cross-border investments, capital flows, and people's mobility. While globalization fosters competitiveness and productivity, it also presents new challenges for tax systems.

Modern society extensively utilizes digital technologies, reshaping various sectors, including accommodation and transportation. E-commerce has become the norm, with new forms of transactions reshaping economic challenges.¹ These transformations directly impact the interpretation and application of fiscal regulations, such as the VAT legislation in the European Union Legislation, whose evolution has not kept pace with economic changes.

VAT is the predominant indirect tax and holds significant economic importance at the EU level, contributing approximately 7% to the GDP in 2021². However, the revenues generated by VAT could be significantly higher. In 2020, EU member states experienced an estimated loss of nearly €93 billion in VAT revenues,³ with a deficit representing 9.1% of the projected revenues, equivalent to a loss of €3,000 per second.⁴

The platform economy is one of the primary transformative forces in the global economy, and it is precisely on digital platforms upon which the thesis focuses.⁵ Through the platform economy, both large enterprises and individuals can quickly commercialize products and services. At the European level, over 500 digital platforms currently operate, underscoring the importance of adequate legislation to ensure compliance with EU standards, especially concerning ensuring neutrality and equality.⁶

The digital platform market in the EU is steadily growing, with projections indicating a significant revenue increase shortly. However, this growth exposes VAT imposition on platforms to considerable uncertainties, particularly regarding passive subjects and transactions.⁷

The European Commission introduced the "VAT in the Digital Age" package in December 2022, aiming to modernize the VAT system and address challenges posed by the digital economy. This proposal represents a substantial reform of the EU's VAT system, with particular attention to the digital platform.⁸ Expanding the

¹ Jain, V., Malviya, B.I.N.D.O.O., & Arya, S.A.T.Y.E.N.D.R.A. (2021). An overview of electronic commerce (e-Commerce). *Journal of Contemporary Issues in Business and Government*, 27(3), 665-670.

² Eurostat 2022

³ The most significant discrepancies in VAT revenue between expected and collected VAT revenues were in Italy (26.2 billion euros), France (14 billion euros), and Germany (11.1 billion euros), See Poniatowski, Bonch-Osmolovskiy, Śmietanka & Pechcińska 2022 p. 38.

⁴ European Commission, Questions and Answers: VAT Gap 2022 report, 2022, [QANDA_22_7519_EN.pdf \(europa.eu\)](#)

⁵ Together with Climate change, technological development, along with digitalization, artificial intelligence

⁶ European Commission. (2021). COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a Directive of the European Parliament and of the Council to improve the working conditions in platform work in the European Union.

⁷ Volker Brühl, Big Tech, the Platform Economy and the European Digital Markets, 2023, [Big Tech, the Platform Economy and the European Digital Markets - Intereconomics](#)

⁸ See [Commission proposes measures to bring VAT into the Digital Age - European Commission \(europa.eu\)](#), 2022

obligations and responsibilities of digital platforms is one of the key proposals, with potentially significant impacts on the entire EU fiscal system. The European Commission recently published a new draft proposal on May 8, 2024, which the ECOFIN deliberated upon on May 14, 2024. Despite these discussions, the proposal did not receive approval due to Estonia's lack of support. The ECOFIN could not achieve a political agreement because one member state maintained its opposition to the extension of the VAT digital platform regulations. Nonetheless, the Belgian presidency of the Council of the EU is committed to finalizing this proposal before the conclusion of its term on June 30. Consequently, the issue is anticipated to be revisited at the next ECOFIN meeting on June 21, 2024.

For these reasons, this thesis will focus on Article Two of the "VAT in the Digital Age" Package and its potential implementations and reforms, which aim to redefine the role of digital platforms in short-term accommodation and passenger transportation services. If implemented, these changes could take effect on July 1, 2027, raising questions about their efficiency and feasibility.

1.2 Objectives, Research Questions, and Limitations.

The central focus of this thesis is to evaluate the efficiency of ViDA's deemed supplier provision in addressing the inherent challenges of platform economies. A secondary key objective is to critically assess the implications of value-added taxation in platform economies resulting from implementing the ViDA package. These goals will be pursued by addressing predetermined research questions comprehensively and harmoniously while also seeking to understand the potential implementations that are feasible.

The research questions for this thesis is:

"To what extent does Article Two of the ViDA proposal efficiently ensure the introduction of a level playing field between online and traditional providers while guaranteeing consistency with core VAT principles?"

Sub-question to elucidate and address the research:

"Analysing the European Landscape and Global Standards, what potential implementations of Article Two can be identified, and how do they address the challenges posed by the digitalization of the economy?"

The scope of this Master's thesis is confined to VAT within digital platforms. While not all factors influencing value-added taxation are covered, the thesis focuses on the most essential issues significantly impacting value-added taxation in platform economies, which is the primary focus of the research.

The recent entry into force of EU Directive 2021/514⁹ amends Directive 2011/16/EU on administrative cooperation in taxation starting from 2023. This amendment aims to enhance tax transparency in the digital

⁹ The EU Directive 2021/514, commonly known as DAC7, refers to the European discipline aimed at improving administrative cooperation in the field of taxation by simplifying the exchange of information between platform operators and tax authorities of individual European Countries, as well as communication among the relevant authorities.

economy. However, despite its evident relevance, it is only mentioned within the context of platform disclosure obligations and will not be further addressed in the thesis.

Despite its evident relevance, EU Directive 2021/514, which amends Directive 2011/16/EU on administrative cooperation in the field of taxation and introduces measures from 2023 onwards to ensure greater tax transparency in the digital economy, is solely mentioned in the context of platform disclosure obligations to understand insights on how to optimize the role of platforms while ensuring equity and neutrality.

This thesis primarily examines the text of the European proposal to understand its regulatory challenges and effects on the digital platforms. Reports from the OECD are also examined because, despite their non-legally binding nature, they remain highly relevant for guiding the international landscape and providing guidelines and recommendations through their reports, which global legislators tend to follow.

As representatives of the reference categories affected by the proposed changes, platform operators Airbnb and Uber¹⁰ are extensively included in this study for meticulous examination as representatives of the categories concerned by Article 2. Notably, the thesis does not delve into the history of platform economies. Furthermore, the thesis does not delve deeply into the technical characteristics of platform economies, such as platform digital structure, development, and operation, as it is unsuitable to present extensive technical starting points given the thesis's scope. Additionally, it is unnecessary to extensively discuss the platform economy market or value formation, considering the thesis's scope.

1.3. Benchmark.

The proposed Benchmark for this thesis aims to evaluate the efficiency of ViDA's article two in ensuring more neutrality and equality, specifically in creating a level playing field between online and traditional providers and simplifying compliance for SMEs and individual service providers, with a focus on resource optimization and analysis of tax administration processes. This approach involves a critical evaluation to identify the characteristics an efficient VAT system must possess when such platforms are tasked with collecting and remittance of VAT.

The analysis commences with a study and evaluation of the innovations and the legislative framework the proposal if implemented, will bring about. Subsequently, it focuses on an evaluation of the current measures in force in various Member States, a comparison with the international landscape and examining how the digital platforms under scrutiny are presently treated. To assess the efficiency of article two, a definition of efficiency proposed by Dwight Waldo is adopted,¹¹ which considers the ratio of effects achieved with available resources to the maximum possible effects with the resources available (referring to the tools at hand).

¹⁰ Uber Technology Inc

¹¹ Overeem, P. (2008). Beyond Heterodoxy: Dwight Waldo and the Politics-Administration Dichotomy. *Public Administration Review*, 68(1), 36–45. <http://www.jstor.org/stable/25145573>. Dwight Waldo has warned that the efficiency of public administration must be supported by a framework of democratically upheld values.

Therefore, it will be analysed how the approach of the European Proposal is efficient in ensuring neutrality while facilitating compliance.

Furthermore, within the context of the thesis, as well as in reality, the objective of eliminating any disparity between online and traditional providers through a directive appears particularly challenging. Considering that every European legislation is the result of a compromise between 27 Member States, the analysis focuses on how and to what extent the ViDA proposal can contribute to achieving this lofty goal or, more realistically, significantly enhance the equality and neutrality of consumption taxes across all sectors.

In summary, the proposed benchmark for the thesis on digital platforms aims to critically evaluate efficiency, considering its potential impacts and expected outcomes in seeking to ensure neutrality and equality even in collecting VAT from digital operators. Note how the concept of efficiency in this thesis aligns with the substantial idea of functionality that the innovative legislative measures under examination have compared to the utopian idea of total equality between virtual and traditional situations.

1.4 Motivation for the Thesis – Societal and Academic Relevance.

The motivation behind this thesis lies in the imperative need to address the complex challenges stemming from digital transformation in the fiscal realm, particularly concerning the taxation of consumption in the digital age, as highlighted by the presented data indicating it as one of the most rapidly growing sectors for the future. The globalization of the economy has profoundly altered the transactional models of businesses and consumers, with the increasing presence of digital platforms across diversified sectors, leading to significant shifts in traditional business paradigms. These changes deeply impact fiscal systems, with traditional VAT frameworks at risk of failing to adapt to the intricate dynamics of online transactions, potentially resulting in revenue losses for governmental institutions and disparities between online and offline businesses.

The analysis of Article Two's efficiency aligns with a growing academic interest in VAT reform and digital taxation. However, it is notable that currently there is a limited academic literature about this article of the European Commission proposal. Nonetheless, this is an expanding field of study. This thesis aims to contribute to this academic discourse by conducting a comprehensive analysis of the implications of Article Two of the Vida proposal in addressing the challenges posed by VAT in the digital era.

This study aims to assess how efficiently the proposed measures can enhance fiscal neutrality, equality and fairness within digital platforms. Essentially, this thesis is motivated by identifying potential implementations to foster efficiency and advance academic understanding in this vital research area.

CHAPTER 2 – Navigating VAT Regulations in the Digital Platform Economy: Challenges and Considerations.

2.1. Unveiling the Platform Economy: Exploring the Intersections of Technology, Economics, and Regulation in the Digital Platform.

The sharing economy encompasses the dynamics of interaction across diverse networks and service platforms, fostering the creation of economic value.¹² Fundamental tenets of the sharing economy include the judicious utilization of resources, the transition from ownership to user rights, peer-to-peer production, and other forms of peer-to-peer engagement.

The term sharing economy is used interchangeably with the European Commission's concept of the collaborative economy, denoting “ business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals ”.¹³¹⁴

Digital platforms can be delineated in various ways. Their function lies in facilitating connections among disparate yet interdependent groups of users, be they firms or private individuals, engaged in economic activities, or otherwise, who interact via the Internet. The principal divergence between traditional intermediary models and online platforms resides in the employment of online technology, with platforms assuming a central role, typically furnishing the intangible network that links providers and users.

Digital platforms, first and foremost, refer to the computing system through which users offer services and other stakeholders can exercise and create added value following common activity rules.

Furthermore, Article Two of the EU Regulation on platform-to-business relations¹⁵ of the European Parliament delineates 'online intermediation services' as services meeting specific criteria:

“They qualify as information society services pursuant to Directive (EU) 2015/1535.

They enable business users to proffer goods or services to consumers, facilitating direct transactions between said users and consumers.

¹² The sharing economy has evolved from an innovative and niche business concept to a prevalent and integral aspect of the contemporary economy. In essence, it facilitates access to resources that are not fully utilized, emphasizing utilization and accessibility rather than ownership. Conversely, a sharing business model is a framework that enables suppliers and customers to collaborate and create value using these resources.

¹³ Maria Juul Members' Research Service, Briefing January 2017 EPRS | European Parliamentary Research Service, [The sharing economy and tourism \(europa.eu\)](https://www.europa.europa.eu/press-communication/infographic/2017/01/sharing-economy-tourism_en).

The collaborative economy presents fresh opportunities for citizens and innovative entrepreneurs. However, it has also stirred tensions between new service providers and established market operators. The European Commission is exploring ways to foster the growth of novel and innovative services and the temporary use of resources, while simultaneously ensuring adequate social and consumer protection. See [Economia collaborativa - Commissione europea \(europa.eu\)](https://ec.europa.eu/economy_finance/economy_collaborativa_en).

¹⁴ Un agenda européen pour l'économie collaborative. <https://www.equal-partners.eu/actualites/un-agenda-europeen-pour-leconomie-collaborative>.

¹⁵ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services.

They are dispensed to business users based on contractual agreements between the service provider and business users offering goods or services to consumers.”

This classification thus pinpoints the platforms under consideration in this thesis. These criteria align with those established by the CJEU, which, about Uber, characterized it as a significant transportation platform service acting as an intermediary service that facilitates the transmission, via a smartphone application, of information about the booking of transportation services between passengers and non-professional drivers utilizing their vehicles for transportation. It may be inferred, *prima facie*, that the requisites for classification as an 'information society service' are met.¹⁶

Taking a further step, it is noteworthy that independence and lack of control over the entities utilizing the electronic platform to promote their services are pivotal in determining whether the online platform provides an intermediary service.

2.2. The Evolution and Regulatory Landscape of the Global Platform Economy.

The platform economy, a phenomenon emerging from the intersections of globalization and digitalization, represents a relatively recent yet rapidly proliferating trend worldwide. It revolves around commercial transactions or resource sharing facilitated through digital platforms.¹⁷

Platform-based economies streamline information sharing and management by consolidating data from disparate organizational sources onto a unified digital platform. Furthermore, they foster stakeholder collaboration, offering favourable opportunities for skill exchange, network expansion, and joint information management. Moreover, platform-based enterprises often enjoy a competitive edge by directly interfacing with end-users, expediting transactions.

While digital platforms like Airbnb and Uber primarily operate online, the tangible goods or services they provide are delivered via traditional means outside the electronic realm. Payment for these goods or services typically occurs through the platform.

Regulatory imperatives in this economy primarily revolve around market access requirements, liability agreements, user protection, rights of freelancers and employees, and taxation. For tax purposes, it is relevant to determine whether platform operators are merely intermediaries or independent sellers of goods and services.

¹⁶ Judgment of the Court (Grand Chamber) of 20 December 2017, *Asociación Profesional Elite Taxi v Uber Systems Spain, SL*, Request for a preliminary ruling from the Juzgado Mercantil de Barcelona.

¹⁷ Key players in the platform economy, notably the United States and China, serve as pivotal hubs driving its expansion and innovation. See Lafuente, E., Ács, Z. J., & Szerb, L. (2024). Analysis of the digital platform economy around the world: A network DEA model for identifying policy priorities. *Journal of Small Business Management*, 62(2), 847–891. <https://doi.org/10.1080/00472778.2022.2100895>.

The estimated annual VAT revenue generated from digital platform ecosystems totals approximately €25.7 billion across EU member states, constituting 2.6% of the total VAT revenue. The total VAT revenue includes €3.7 billion from accommodation services and €3.1 billion from transportation services.¹⁸

Parties involved in the platform economy can generally be categorized as service providers (regardless of whether they are taxable persons conducting economic activity), consumers, and platform operators. Platform-based entities combine the supply and demand of goods or services from providers and consumers through their platforms. Three types of legal relationships are involved: the relationship between the platform and the provider, the relationship between the provider and the customer and the one within the platform and the customer.

Interactions within user groups on digital platforms typically involve one party providing or transferring resources, property, time, skills, goods, or services to another party in exchange for monetary compensation or other consideration. While the operational services of digital platforms may vary, they mainly facilitate consumer purchases from businesses or other consumers.¹⁹

Contracts for the sale of goods are frequently executed through these platforms, with sellers typically paying a commission to the platform to facilitate the transaction.²⁰ Typically, Digital Platforms act as intermediaries, connecting various types of users and facilitating transactions between them, and they often charge a commission for their services.²¹

Within the Member States of the European Union, platforms are generally known for connecting parties interested in offering a product or service (*providers*) with those wishing to purchase it (*users*). They facilitate user communication by enabling the sharing of information, comments, messages, videos, and images while also connecting users with third parties such as advertisers, developers, and content providers. Indeed, this paradigm is exemplified by highly renowned platforms such as Airbnb,^{22 23} which predominantly focuses on accommodation services, specifically apartment rentals and home-sharing, while Uber²⁴ primarily operates within the transportation services sector.

¹⁸ Pieter Baert, Members' Research Service, VAT in the digital age, 2023, [VAT in the digital age \(europa.eu\)](#), See [ViDA: VAT treatment of the platform economy | Sovos UK](#).

¹⁹ Daisy Chan, Freck Voortman, Sarah Rogers, Bart Moen The rise of the platform economy January, 2019, [deloitte-nl-hc-the-rise-of-the-platform-economy-report.pdf](#).

²⁰ Elvy, S. A. (2017). Hybrid Transactions and the INTERNET of Things: Goods, Services, or Software? <https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=4530&context=wlulr>.

²¹ Gawer, A. (2022). Digital platforms and ecosystems: remarks on the dominant organizational forms of the digital age. *Innovation*, 24(1), 110–124. <https://doi.org/10.1080/14479338.2021.1965888>.

²² Airbnb: Vacation Rentals, Homes, Experiences & Places, available at <https://www.airbnb.com>.

²³ Airbnb, founded in 2008 with operations in over 220 different countries or regions, offers individuals and businesses digital platforms as marketplaces that connect customers and service providers offering accommodations or experiences. See [Value Added Tax \(VAT\) and how it applies to you - Airbnb Help Centre](#), the platforms in question rely on third parties to identify and explain tax regulations on their websites.

²⁴ Uber Technologies, Inc., commonly known as Uber, is an American multinational transportation corporation that provides ride-hailing, courier, food delivery, and freight transport services. Uber is a global technology company that has revolutionized transportation services, operating in over 70 countries and spanning more than 10,000 cities worldwide. It offers digital platforms to

2.3. Analysing the Current Regulatory Landscape of VAT in the Digital Economy – Changes and Reform Impacts.

VAT has always been subject to stringent regulation at the European level, primarily motivated by the desire to promote the free movement of goods and services, stimulate competition among businesses within the Member States, and combat fraud, with a significant portion of revenue allocated to the community budget. Over time, numerous directives and regulations have meticulously governed VAT, in contrast to direct taxes,²⁵ marking significant progress towards harmonising taxation at the European level.²⁶ In particular, the introduction of electronic invoicing and the MOSS regime²⁷ has streamlined procedures and ensured greater legal certainty.

Currently, rules regarding VAT application, collection, and invoicing vary depending on the type of transaction (goods transfer or service provision) and the parties involved. EU VAT system ensures extensive deduction rights, theoretically rendering the system neutral and not influencing the relative prices of raw materials.

VAT is the most widespread consumption tax system globally. It is used in Europe, Asia, South America, and Africa.²⁸ Currently, the EU's VAT system is mainly regulated by the VAT Directive (2006/112/EC), providing a common legal framework that is transposed and applied by individual Member States, with the Commission responsible for ensuring its proper implementation.²⁹

Article 14 of the VAT Directive clearly outlines the difference between the supply of goods and the provision of services, establishing that the former concerns the transfer of control over tangible goods. At the same time, the latter refers to operations that do not involve the transfer of goods. This distinction is fundamental in determining the applicability of VAT and the tax responsibilities of the parties involved. According to Article 24 of the VAT Directive, the provision of services refers to operations that are not supplies of goods, and the sale of a service is consideration for the provision of a service or other supply in return. Services are therefore defined in the directive and VAT law exclusively: if the operation does not involve goods at the time of delivery, it is considered a service.

individuals and businesses, serving as marketplaces that connect customers seeking ride services with independent ride service providers. Data is crucial to Uber's operations, and in 2015, revenue from data was approximately three times higher than revenue from transportation in the Silicon Valley region.

²⁵ In the European Union, direct taxes remain primarily under the sovereignty of individual member states. Each member state has the authority to determine its own direct tax rates, rules, and collection procedures. However, there are some common principles and guidelines within the EU that promote coordination and prevent harmful tax competition among member states. Additionally, the EU may influence direct taxation through directives and regulations concerning areas such as cross-border taxation, anti-tax avoidance measures, and the exchange of tax information among member states.

²⁶ European Commission, EU VAT rules by topic, See [EU VAT rules by topic - European Commission \(europa.eu\)](https://ec.europa.eu/economy_finance/eu-vat-rules-by-topic).

²⁷ The VAT Mini One Stop Shop (MOSS) is a voluntary program enabling to manage VAT obligations, typically applicable in numerous EU countries, through a single EU member state. Cross-border television, telecommunication and radio broadcasting, or digital services providers to non-taxable individuals, might qualify for participation in this initiative.

²⁸ Except for the United States, where sales taxes are imposed at the sub-national level, all OECD countries impose VAT or GST. As of November 1, 2020, consumption tax has been implemented in 170 countries and territories worldwide.

²⁹ At the time the International VAT/GST Guidelines were finalized in 2016, approximately 165 countries had implemented a VAT system, marking a significant increase compared to 25 years earlier when the number was less than half. OECD (2017), International VAT/GST Guidelines, OECD Publishing, Paris, <https://doi.org/10.1787/9789264271401-en>.

In the case of services, it is considered that consumption takes place in the country where the purchaser or seller of the service is located. Furthermore, the place of performance in receiving operations in the hotel sector or similar sectors is instead the location of the immovable property. The fundamental principles of the common system of VAT, according to Article 1, paragraph 2 of the VAT directive, imply a tax proportional to the prices of goods or services, regardless of previous commercial transactions. Even such principles must be respected in the digital world.

The advent of digital platforms has revolutionized the landscape of international trade, introducing significant challenges for VAT regulations. The complexity arising from suppliers' lack of physical presence and the diversity of transactions makes it difficult for tax authorities to monitor and ensure VAT compliance by digital platforms, which increasingly assume the role of tax co-obligors in various Member States.

Additionally, the separation between VAT debt and income tax debt must be considered: the tax obligation on income derived from platform economy transfers does not automatically mean that the transfer would be subject to VAT. According to the European Commission, supplies of goods or services offered directly by platforms or alternatively by platform users through platforms are, in principle, operations subject to VAT.

There has been a surge in transparency regulations to address the multiple potential challenges arising from the advent of the digital age. One notable illustration of this trend is the amendment of Directive DAC7 which took effect on January 1, 2023. This directive aims to combat tax avoidance and promote fair taxation in the digital economy by broadening the scope of automatic exchange of information to encompass digital platforms. The one-stop-shop system, introduced after the expansion of the Mini one-stop-shop in July 2021, has contributed to streamlining VAT compliance in intra-EU trade.

The EU VAT legislation does not currently contain separate rules currently in force on VAT for the sharing economy, and situations specifically related to the sale of services on platforms are not separately regulated in the VAT Directive. Therefore, the regulation provides that services provided through digital platforms are usually subject to VAT in the country where the supplier is established, as there is no specific separate regulation for such services. The common practice is that the country where the seller is established determines the country where VAT on the service sold should be charged. However, there is an exception for electronic services, which are taxed in the country where the buyer resides. This buyer can be either a consumer or a trader. When the buyer is not a trader, i.e., when the buyer is a consumer, the service seller is responsible for VAT accounting. When the parties in international trade are both entrepreneurs, the buyer is usually subject to tax due to the reverse charge VAT obligation.

Electronic services are services provided via the internet or an electronic network and whose nature stems from being predominantly automated, requiring minimal human involvement and cannot be provided without

information technology.³⁰ The VAT Directive and VAT Law annexes contain indicative lists of electronically supplied services. A service is not considered an electronic service solely based on the fact that the seller and the buyer are in contact with each other via electronic mail. Neither is it an electronic service when a customer orders from a service provider via an electronic network or system, such as car rental, accommodation, passenger transport, tickets for educational, cultural, artistic, scientific, sporting, entertainment events, catering services, or similar services. Consequently, the rules concerning electronic services do not apply to all services offered by a lot of platform companies, such as passenger transport services purchased through Uber. Consequently, there is a clear need for legislation to address these platforms from a VAT perspective.

Furthermore, the OECD has recommended for organizing cross-border trade in the digital business. In its recommendations, the OECD also defines the location of the buyer, which is the country of consumption of the intangible good or digital service. The recommendation is based on the fact that the digital service is not provided in a physical location where both the seller and the buyer are present.³¹

2.4. Encountered in Current VAT within Platform Economies.

The dominant market position of digital platform companies in the global digital operating environment can pose challenges. In regulating the platform economy, many challenges also involve income taxation and labour law issues. Concerns regarding the taxation of the platform economy have long been recognised. As early as 2016, the Commission acknowledged the existing challenges posed by the collaborative economy in adhering to tax regulations and ensuring compliance.³² These challenges have been attributed, among other factors, to difficulties in taxpayer identification, inadequate information about service providers, variations in regulations among EU countries, and limited information exchange.

About the application of VAT in the digital realm, the implementation of existing regulations to safe harbours numerous ambiguities and inconsistencies, leading, among other things, to intentional and unintentional neglect of tax obligations. It is worth noting that all non-taxable persons have the potential to become service providers within the platform economy. To comprehensively monitor VAT compliance on a large scale within the platform economy, substantial resources would be required under current legislation. The robust growth of the platform economy, the complexity of business operations, and the multitude of parties involved in transactions pose challenges for VAT imposition and collection.³³ Key issues include determining who bears

³⁰ It is feasible to compile a suggestive inventory of electronically provided services as outlined in Article 7 of Implementing Regulation No 282/2011. See [information_microbusinesses_euvat_2015_en.pdf \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R0282-20160101).

³¹ López González, J. (2021), "Trade and cross-border data flows", OECD Going Digital Toolkit Notes, No. 11, OECD Publishing, Paris, <https://doi.org/10.1787/7bc12916-en>.

³² European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS A European agenda for the collaborative economy COM/2016/0356 final.

³³ Lafuente, E., Ács, Z. J., & Szerb, L. (2024). Analysis of the digital platform economy around the world: A network DEA model for identifying policy priorities. *Journal of Small Business Management*, 62(2), 847–891. <https://doi.org/10.1080/00472778.2022.2100895>.

the VAT liability on sales conducted through platforms and identifying the entity responsible for selling products or services to end customers.

Issues may arise, particularly in situations where the seller is not a taxable person. From the EU perspective, there are problems, particularly regarding VAT collection. Fraud and non-compliance issues cannot be efficiently countered with current legislation, and the costs and other burdens for tax authorities and businesses are significant.

Digital platforms typically possess extensive user databases and payment transaction records. In particular, various reporting obligations are fragmented among Member States in interstate relations. Conversely, peer-to-peer platform economy transactions are not regulated. These gaps in regulation result in diverse regulatory approaches among EU countries. The current VAT regulation of the platform economy contains many aspects that need to be clarified. Ambiguity is associated, for instance, with the roles of entities operating within the platform economy, which are not precisely defined in current regulations. Moreover, there are particular challenges related to the nature and place of supply of platform economy services. From the outset, it is crucial to emphasise that such challenges are fundamentally interconnected.

2.4.1. Challenges in Defining Roles and VAT Liability within Platform Economies.

Defining the roles of parties within platform economies presents challenges. Platforms and individuals providing goods or services can be seen in various roles. Under current regulations, the platform may be viewed, for instance, as a seller, agent, or intermediary. Challenges associated with roles extend beyond the determination of VAT liabilities, as the ambiguity surrounding them is crucial in interpreting the nature of the entire enterprise.³⁴

Transaction chains within platform economies can be highly complex, lacking a transparent linear supply chain in planned transactions.³⁵ This complicates the determination of VAT liability, mainly when transaction parties are located in different countries.

Generally, in the digital economy, if the self-employed individual exceeds the VAT taxable activities threshold, they must manage VAT accounting themselves, while the platform remains responsible for VAT accounting on payments or commissions charged for the intermediary service. However, if the individual is considered an employee of the platform company or if the company is considered a deemed supplier, the division of responsibilities changes, and the platform assumes full responsibility for accounting for value-added tax on the total sales amount.

³⁴ For instance, under current legislation, if a platform is classified as a seller, it may be responsible for collecting and remitting VAT on the goods or services provided. Conversely, if it is seen as an intermediary or agent, the responsibility for VAT might shift to the individual service providers or sellers using the platform. This distinction is critical because it influences not only tax compliance but also consumer protection and liability issues. See International VAT Rate Changes: June 2020. <https://taxbackinternational.com/blog/vat-rate-changes-june-2020/>.

³⁵ Wu, J., & Yu, J. (2023). Blockchain's impact on platform supply chains: transaction cost and information transparency perspectives. *International Journal of Production Research*, 61(11), 3703–3716. <https://doi.org/10.1080/00207543.2022.2027037>.

Determining the VAT liability of the platform-managing company is usually unambiguous.³⁶ Challenges of VAT in platform economies primarily concern situations where it is necessary to evaluate whether an individual selling goods or services through the platform is subject to VAT on their sales.³⁷

As underlined previously, defining parties' roles within platform economies poses challenges due to the ambiguity surrounding the roles of platform maintainers and service or goods providers. This lack of clarity complicates determining VAT compliance responsibilities.

In the case of a passenger transport service like Uber, the service provider had to pay VAT when turnover exceeded the threshold of a small business. In other cases, the service provider is liable for VAT only when they have opted to be subject to VAT. It can be challenging to draw a boundary because operating on the platform does not automatically and directly entail operating as a business.

On the other hand, an individual may even be required to pay VAT on income received through the platform. For instance, in the case of accommodation activities, there exists ambiguity regarding whether the situations are subject to VAT. When evaluating the VAT liability of accommodation activities, factors such as the nature, scope, and duration of the stay are considered, along with the anticipated development of accommodation operations.

The platform's role as a VAT taxpayer has been debated for years. For example, the non-profit organization Good Law Project in the United Kingdom demanded that Uber pay £1.5 billion in VAT for passenger transport services sold³⁸. In this case, the central issue was whether the platform should be considered a service provider rather than a third-party intermediary offering services for independent drivers.

Problems arise when regulations are fragmented and not harmonised. Differences in regulation among EU member states significantly increase administrative costs and regulatory complexity for cross-border digital platforms. Monitoring self-initiated tax payments becomes difficult for tax authorities when platforms do not require or control user identification. Such ambiguity poses challenges at the European level, hindering platform economies' growth and utilization of opportunities. Moreover, unclear regulations may be exploited inappropriately.

Sellers offering services through platforms are often individuals who may not operate as businesses. Additionally, there can be numerous uncertainties regarding who is liable for VAT purposes. Understanding

³⁶ If the platform is not held responsible, the deficient VAT might still be retrieved from the actual supplier. According to Article 205 of the VAT Directive, Member States have the authority to establish a shared and several liability system. However, such a system, under which a Member State can identify a platform as jointly and severally responsible for VAT payment under Article 205, can only extend to holding the platform accountable with any fault on its part. The European Court of Justice set this legal interpretation in the *Vlaamse Oliemaatschappij* case (ECJ, 21 Dec. 2011, Case C-499/10).

³⁷ There is a need for a system that makes the EU's Value-Added Tax (VAT) system work better for businesses and is more resilient to fraud by embracing and promoting digitalisation.

³⁸ See [Uber Case - Good Law Project](#).

this scenario can be difficult for inexperienced operators because current regulations frequently assign the responsibility of charging, declaring, and accounting for VAT to private individuals acting as sellers.

Turning now to the nature of services and the place of delivery, the VAT treatment of facilitation services and the place of delivery are often not clear. In the platform economy, pinpointing the fixed establishment of a company acting as a seller can be challenging, as it may not necessarily align with current regulations. Additionally, determining the country in which the buyer purchasing the service through the platform is located can pose difficulties.

As mentioned previously, the nature of services and the place of delivery are closely tied to the need for clear roles and the entity liable for VAT.

According to stakeholders in the platform economy, the nature of the delivery sold through the platform, and hence the place of delivery, presents challenges. There are variations in regulation among member states, and only some of them regard services offered through the platform as, for instance, intermediary services. Without harmonisation of regulation at the European level, the diversity in interpretations among tax authorities across member states is likely to further escalate in the future.³⁹

Currently, the ViDA proposal has not been approved due to Estonia's non-approval, mandating that Article Two of the proposal be adopted and implemented by each state on a voluntary basis, thus taking an approach decidedly non-harmonised. However, interpretation variances among member states result in additional costs, particularly for digital platforms and service providers, as they must manage the supply of similar services differently for tax purposes among various European countries. These discrepancies among member states contribute to regulatory complexity for digital platforms, potentially leading to double taxation or complete absence of taxation. The risk is that this may trigger future disputes and an unequal distribution of VAT revenues among the various EU member states.

2.4.2. Lack of Equality and Neutrality.

The uniform taxation of similar economic activities, namely the Equality of VAT,⁴⁰ leading to the Neutrality of VAT,⁴¹ is one of the central principles of the EU VAT system. The principle of fiscal Neutrality stipulates that goods and services that are identical or similar must be treated equivalently for VAT purposes.⁴² Neutrality

³⁹ Harmonization, which involves establishing minimum standards for lawmakers, is a fundamental objective and scope within the European Union (EU). At its core, EU harmonization is structured around four pillars of freedom, seeking to facilitate the unrestricted movement of goods, services, people, and capital. To achieve this goal, the EU legislator has deployed various comprehensive tools and mechanisms, often resulting in the delineation of specific regulations for each sector. These regulations are based on the core freedoms and associated rights, such as the right to establishment.

⁴⁰ Equality refers to treating everyone equally, regardless of their circumstances. In VAT, Equality might mean applying the same tax rate to all transactions, irrespective of the nature of the goods or services involved or the financial capacity of the parties involved. However, Equality doesn't necessarily result in fairness because it fails to consider differences in needs, capacities, and circumstances among taxpayers.

⁴¹ VAT neutrality is affirmed in Recital 5 of the Preamble to the VAT Directive (2006/112).

⁴² On 10 November 2011, the Court of Justice of the European Union (ECJ) delivered its judgment in *Commissioners for Her Majesty's Revenue and Customs v. the Rank Group plc* (Cases C-259/10 and C-260/10).

involves both a legal element of equal treatment and a systematic component of input VAT deduction, ensuring that VAT remains proportional to prices. In the context of the EU, non-neutral taxation disrupts fair competition and undermines a level playing field, posing a threat to the integrity of the internal market.

In the current VAT regime of the platform economy, fair and neutral value-added taxation is only partially implemented in some aspects. Platform services offered on platforms vary in nature and are subject to VAT rules that differ from member state to member state. This fragmentation can pose crucial challenges regarding Equality in VAT treatment and creating a level playing field between online and traditional providers in all Member States. Such discrepancies are reflected in the final price of similar services provided to end consumers, the choice of delivery channel by service providers, and the costs incurred to comply with VAT obligations. Practical challenges in determining and enforcing VAT owed by online suppliers are compounded by the fact that non-taxable persons often provide services offered via digital platforms.

In today's landscape, many small and medium-sized enterprises take advantage of the opportunities presented by the platform economy. These businesses may engage in occasional and small-scale activities, benefiting from VAT exemptions that mitigate concerns regarding VAT costs and compliance.

According to regulations, the VAT exemption provided by regulations due to the small size of certain suppliers is not intended to undermine the neutrality principle but rather to create a situation of greater comfort for small businesses, reducing their tax costs and thereby facilitating growth and survival. However, it emerges that, unlike in traditional channels, the network enables these VAT-exempt small businesses to effectively compete on par with large suppliers who hold VAT numbers. Therefore, the combination of network effects from platform use and the advantages offered by the VAT system to small and medium-sized enterprises may enable small players in the digital platform economy to gain an advantage over traditional suppliers and treat large suppliers unequally as they are not required to apply VAT on their service.

Hence, the European Commission asserts that there is a potential issue of inequality and non-neutrality associated with VAT in the platform economy. In many instances, a professional operator, subject to VAT, competes with numerous non-taxable sellers within the same market of the platform economy. The price of goods or services offered by the professional operator includes VAT. However, a non-taxable provider does not have the right to deduct VAT on their purchases, resulting in hidden VAT costs embedded in their products. With the rapid expansion of the platform economy, this challenge could become increasingly significant in the future.

Under current platform economy regulations, traditional and digital businesses are not treated on equal footing.

The ECJ, sitting in its Third Chamber, ruled that: " The principle of fiscal Neutrality must be construed to mean that a divergence in the treatment for VAT purposes of two service supplies, which are identical or similar from the consumer's perspective and fulfil the same consumer needs, is adequate to establish a breach of that principle. Therefore, such a breach does not necessitate demonstrating the actual presence of competition between the services in question or the distortion of competition due to such difference in treatment".

CHAPTER 3: The ViDA Proposal: A Tax Reform for Digital Platforms – MAY 8, 2024 EU COMMISSION'S PROPOSAL.

3.1. Overview of Context and Reason for the Proposal.

The ViDA package proposed by the European Commission aims to amend Directive 2006/112/EC on VAT, EU Council Implementing Regulation No 282/2011, and EU Council Regulation No 904/2010 on administrative cooperation.⁴³

On December 8, 2022, the European Commission unveiled, for the first time, its proposal to modernize and enhance the EU's VAT system to better accommodate the requirements of the digital age. This initiative stems from the acknowledgement that the current VAT legislation of the EU, which has remained largely unaltered for over 30 years, is ill-suited for the digital economy.⁴⁴ However, despite subsequent revisions, the proposal continues to face challenges in gaining approval and undergoes further modifications at the outset of May 2024.

Central to the proposal is introducing an innovative taxation framework and liabilities for services provided by short-term rental accommodation and passenger transport digital platforms, mainly when the underlying supplier is not liable for VAT payment. From the perspective of the European Commission, the absence of specific provisions within the VAT Directive regarding the treatment of services provided by individuals or SMEs through platforms has resulted in inconsistent VAT collection, leading to competitive imbalances in short-term accommodation rentals and passenger transport services.

While certain Member States offer exemptions for short-term rental accommodation, others do not, further exacerbating regulatory disparities across the EU. Moreover, the classification of platform facilitation services varies, ranging from intermediary services to electronically supplied services, adding complexity to the VAT treatment of such transactions.⁴⁵

According to the European Commission, the business model of digital platforms, with its potential to reach a broad consumer audience, places small service providers, typically exempt from VAT registration obligations, in direct competition with traditional taxable businesses, thereby distorting competition. The proposed package of proposals and innovative reforms is expected to help collect an additional total of 18 billion euros, although it is not inherently designed as a revenue-raising measure but instead aims to create a level playing field.⁴⁶

The ViDA package will act on three fronts: transitioning to real-time digital communication by introduction of electronic invoicing for businesses operating cross-border in the EU, updating VAT rules for passenger

⁴³ For an overview of the proposal, please refer to [VAT in the Digital Age - European Commission \(europa.eu\)](https://ec.europa.eu/economy_finance/vat-in-the-digital-age).

⁴⁴ See European Commission - Questions and Answers: VAT in the Digital Age. [Questions and Answers VAT in the Digital Age.pdf](#).

⁴⁵ An in-depth Analysis can be found in Chapter 4.

⁴⁶ Amand, C. (2023). VAT in the digital age proposals: Critical views. *European Business Law Journal*, 2(2), 25-37.

transport and short-term accommodation platforms and introducing a single EU-wide VAT registration. The Commission has launched ViDA to modernise the European Union's VAT system and enhance its resilience against fraud while fostering a business-friendly environment through leveraging the opportunities presented by digitalization. ViDA traces its origins back to the Action Plan for Fair and Simple Taxation in Support of the Recovery Strategy.⁴⁷

The innovative VAT regulations concerning the platform economy, which are the central focus of this thesis, were initially slated by the Commission for enforcement at the beginning of 2025. However, their implementation and final endorsement require unanimous approval by the Council. The necessity to reach an agreement among all member states could also impact the quality of the final proposals. Recognizing the need to reconcile the interests of 27 countries, drafts circulated within the Council often need to be scaled back to gain approval from all involved nations, rather than containing the most ambitious proposals. Instead, they aim to secure the support of most member states, even if this means they may be diluted or lack coherence.

Recent developments have highlighted the challenges in achieving unanimity among all member states, as evidenced by the obstacles encountered. On May 14, the economic and finance ministers from all EU member states failed to reach a common agreement on the proposal.

The predominant challenge that has spurred the emergence of this European proposal is rooted in the shortcomings of the existing VAT regulatory framework to foster fair competition with traditional enterprises, especially within the transportation and accommodation sectors, and to reinstate a neutral market environment. The European Commission recognizes the imperative need for reform to establish a level playing field, particularly in light of the observed risk of service providers failing to meet their VAT obligations, notably within the short-term accommodation and passenger transport sectors. Consequently, the Commission's proposal significantly expands the platforms' responsibility to collect VAT, requiring these platforms to ensure the collection and remittance of VAT on the transactions they facilitate when the actual supplier does not.⁴⁸ As a result, the burden on SMEs and non-compliance issues could be significantly lighter compared to today if their responsibilities were transferred to digital platforms. To comply with the new VAT obligations, digital platforms will be required to register in all member states where they conduct business activities, or they can also utilize existing simplification measures like the "one-stop shop" regime by registering in a single member state. Through this simplified scheme, can report and pay VAT in a single jurisdiction for services provided

⁴⁷ Madeleine, Merckx and Gruson, John and Verbaan, Naomie and van der Doef, Bart, VAT in the Digital Age Package: Viva La ViDA or Livin' La ViDA Loca? (May 3, 2023). Wolters Kluwer - EC Tax Review, 2023, Available at SSRN: <https://ssrn.com/abstract=4437300> or <http://dx.doi.org/10.2139/ssrn.4437300>

⁴⁸ The term "facilitating" is used in various regulations and can carry different implications based on the context. In the context of article 2 of the ViDA proposal concerning the Deemed Supplier rules for short-term accommodation rental and passenger transport, a precise definition will be provided within the Implementing Regulation. "Facilitating" shall encompass the utilization of an electronic interface to enable interaction between a customer and a supplier offering services such as short-term accommodation rental or passenger transport through said interface, thereby resulting in the provision of such services via the electronic platform. This definition will also encompass scenarios where facilitation does not occur, including instances where the platform does not dictate the terms of service provision, is not engaged in transaction processing, and does not participate in the delivery of the respective services.

within the European Union, considering themselves deemed taxable persons. To this end, the definition of the member state of consumption will be expanded. New paragraphs will be introduced in Article 369a to extend the definition of the member state of consumption and include the supply of goods under Article 36 (supply of goods with installation or assembly), Article 37 (supply of goods on board ships, aircraft, or trains), and Article 39 (supply of gas, electricity, heating, and cooling), as well as domestic supplies of goods.

From the deemed supplier provision, it is estimated that up to 6.6 billion euros in additional VAT revenue per year for Member States could be recovered over the next ten years.⁴⁹ This system of VAT collection and accounting at the European level could thus ensure greater fairness and harmonization, especially given the current regulatory gap in this area at the European level. It remains to be assessed whether this proposal, if approved, will not only fill a current regulatory gap but also efficiently ensure greater neutrality and equality in the collection of the leading indirect tax or whether its utility will be limited to filling a regulatory gap and therefore may not be as efficient in the subsequent years.

3.2. Main Modifications Presented

The main changes proposed revolve around expanding platforms' responsibility in VAT collection and accounting, aiming to address current disparities in VAT application within the short-term accommodation and passenger transport by road sectors.

Under current VAT rules, a hotel in a major European city, for example, must compete with a platform that can facilitate thousands of listings in the same city, many of which are not subject to VAT and, therefore, often offering lower prices.⁵⁰ The reform establishes that short-term accommodation rental and passenger transport by road sectors provided through digital platforms are not exempt from VAT in the EU, and that intermediary platforms operating should ensure the collection of VAT on the sales they facilitate. This obligation applies only when the original supplier, such as a small business or an individual supplier, is not liable to collect VAT themselves.⁵¹ Under the new rules, SMEs and individual entities engaged in activities such as renting properties

⁴⁹ See European Commission, VAT for the Platform Econom. Retrieved from https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-e-commerce_en.

⁵⁰ Carmen Muñoz Sánchez, the Head of the Sector overseeing TAXUD's VAT Policy Unit, sought the perspective of the hospitality sector. A public consultation revealed that over 70% of respondents from the "traditional" industry voiced concerns about experiencing competition distortion from businesses providing similar services through digital platforms. This feedback substantiates the necessity for proactive measures to be implemented. https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-e-commerce_en.

⁵¹ Without considering the high earnings of, whose profits are still quite substantial, According to figures reported by Federturismo based on research conducted by Deloitte Real Estate & Hospitality, the hotel industry should not fear competition from short-term rentals. The Italian traditional sector leads the EU area in revenue, with approximately €30.5 billion, ahead of France, with nearly €26.2 billion. However, it is objectively true that if a subject is not required to pay the indirect tax on a provided service, they will consequently have the opportunity to offer a service at a reduced price, given the lower expenses incurred.

through online platforms may have their VAT managed by the platform, thereby streamlining their business operations.⁵²

One of the key amendments proposed in the ViDA proposal is the substantial increase in the liability of digital platforms for the collection of VAT. Thanks to the addition of Article 28 a, a taxable person facilitating⁵³ the provision of short-term accommodation rental or passenger transport by road services through the digital platform is considered to have received and personally carried out the services in question. However, following negotiations and concerns raised by member states, certain exceptions have been agreed upon. Member states may choose to exclude the following two categories of underlying suppliers:

1. Suppliers who provide the platform with their VAT identification number issued in the Member States where the supply takes place, or the identification number allocated to them in accordance with Article 362 (which states that the Member State of identification shall allocate an individual VAT identification number to the taxable person not established within the Community and notify them electronically), or Article 369d (which states that a taxable person using the special scheme shall be identified for VAT purposes in the Member State of identification only, using the individual VAT identification number already allocated to them for their obligations under the internal system).
2. Suppliers utilizing the new 2025 SME VAT registration special scheme for small enterprises.

The provision of the VAT identification number allows suppliers to continue recovering input VAT costs against their output VAT. These exceptions aim to address the specific needs and concerns of small businesses and individual suppliers within the digital platform economy, allowing them to manage their VAT obligations more efficiently.⁵⁴

The Commission has sought to clarify that "passenger transport services by road within the Union" refers to service segment conducted between two EU locations. Concerning short-term accommodation rental, it is specified that this pertains to the continuous lease of accommodation to the same individual for a maximum of 30 nights. In a departure from the original proposals and to maintain consistency among member states, the definition of "short-term" has been revised from 45 days to 30 days. Furthermore, it has been emphasized that member states retain the authority to impose additional conditions through their domestic legislation to qualify further the definition of "short-term," thereby reflecting national approaches. Consequently, such categories

⁵² Similar to the deemed supplier model outlined for online electronic interfaces (since the implementation of Directive 2017/2455 on July 1, 2021), the proposed legislation considers platforms as the actual suppliers of goods for VAT purposes. This means they are responsible for VAT on such sales as if they were facilitating the transactions.

⁵³ The interface must "facilitate" the delivery of goods and services. This term encompasses more than mere intermediation and is specifically defined in Article 5b of the VAT Implementing Regulation, Council Implementing Regulation (EU) 282/2011 of March 1, 2011, which lays down implementing measures for Directive 2006/112/EC on the common system of VAT.

⁵⁴ The increasing responsibility of platforms is also reflected through the application of Article 28 of the VAT Directive. By Article 28 of the VAT Directive, an intermediary purchases and supplies a service based on the contractual conditions agreed upon by the parties, regardless of the specific type of transaction or sector of activity involved, as in the case of deemed suppliers. Consequently, this article has garnered increased attention, and the corresponding case law of the Court of Justice of the European Union (CJEU) is generating significant expectations. See UK: ECJ, 28 Feb. 2023, Case C-695/20, Fenix International Limited v. Commissioners for Her Majesty's Revenue and Customs.

and qualifications must be communicated by the respective member states to the Commission, which subsequently will compile and publicly disclose a comprehensive list containing the various information pertaining to each member state by December 31, 2027. Additionally, it is specified that Member States have the authority to demand that the platform operator facilitating the provision validate the supplier's VAT identification number mentioned based on the national laws of each Member State.

Given the importance of establishing a level playing field and safeguarding competition within the internal market, the European Commission will be required to submit an evaluation report to the Council to assess the impacts and developments of the deemed supplier provision by July 1, 2032. This report will also evaluate the potential expansion of these same rules to other sectors, as the European Commission has underscored its objective of extending such new rules to other sectors not currently identified.

The ViDA proposal expands the scope of deemed provisions to encompass specific instances previously excluded from the purview of Directive 2017/2455 upon its enactment despite constituting common activities e-commerce. With this reform, VAT collection will be expanded, and non-compliance among member states within specific sectors will be reduced. Instead of directly requiring VAT payments from suppliers, which could be excessively burdensome, the European Commission proposes leveraging platforms to handle VAT collection. This approach aims to streamline collection and control efforts, thereby avoiding the exclusion of thousands of operators from the VAT system, particularly in cases where the underlying supplier is not established in the EU.

Another European initiative is the proposal to amend Directive 2006/112/EC on the common system of VAT as regards the special scheme for SMEs. It is designed to further simplify the lives of SMEs, who often face high administrative burdens in order to benefit from the advantages of the single market fully.⁵⁵ Under this innovative Special Scheme, Member States will retain the authority to exempt small businesses with an annual turnover not exceeding a specified threshold, capped at €85,000 (maximum exemption threshold). These updated regulations will extend the exemption to SMEs established in Member States other than the one where VAT is due, provided that their turnover in the respective Member State falls below the national threshold and their annual turnover within the EU remains below €100,000. This safeguard threshold is intended to prevent companies with significant turnover from exploiting the SME exemption in other Member States. To streamline this process, SMEs will be allowed to use the Single Registration Window within their own Member State.⁵⁶

⁵⁵ The new VAT scheme builds upon the foundational principles outlined in the proposal for a new definitive single EU VAT area put forward in October 2017, as well as the VAT Action Plan aimed at achieving a unified EU VAT area, which was introduced in April 2016. See [European Commission proposes far-reaching reform of the EU VAT system \(1\).pdf](#), 2017.

⁵⁶ See [Public Consultation on the special scheme for small enterprises under the VAT Directive - European Commission \(europa.eu\)](#), [VAT scheme for Small Businesses - European Commission \(europa.eu\)](#).

This SME scheme also contributes to harmonising the VAT regime, as European-wide thresholds⁵⁷ are established to determine the applicability of the new regulation and the VAT liability for these businesses. However, the deemed supplier provision does not incorporate equivalent income thresholds.

To prevent abuses, it has been clarified that transactions for which a platform is deemed the supplier cannot be included in the special regime for travel agencies. Similarly, it is noteworthy to underline that, in a further change, travel agents are to be excluded from the deemed supplier provision.^{58,59}

The provision of the service by the platform to the final customer should not affect the platform's right to deduction for its activities.⁶⁰

One of the key impacts of the proposal would be the clarity it brings to the rules governing the place of supply of services provided by digital platforms. The inconsistency among various European countries regarding the treatment of VAT for services provided by platforms underscores the critical need for harmonizing rules on the location of sales for such services rendered through platforms. The Commission's proposal includes the addition of Article 46a to the VAT Directive, aiming to address this issue. With this addition, the place of supply for assistance services provided through the platform to non-VAT registered entities would be aligned with the location of the primary activity, as specified in other provisions of the VAT Directive. VAT is anticipated in the ViDA proposal to render the location of the seller-supplier irrelevant, as the platform would assume VAT obligations even in instances where the seller operates outside the EU. In practice, with Article 46, this modification implies that live services will be subject to taxation at the place of consumption, even if they do not strictly fall under the category of electronically supplied services due to the involvement of some level of human intervention. The EU legislator aims to tax, whenever possible, in the destination country. Intermediary services provided to end consumers would be allocated to the member state where the underlying transaction is supplied and taxed. This updated sourcing provision would extend beyond platforms facilitating the offering of short-term accommodation and passenger transport services.⁶¹

Some member states currently grant exemptions for short-term accommodation rentals, and it is proposed that such exemptions should be rescinded if ViDA is approved.

Furthermore, the Commission proposes to clarify the provisions on the tax exemption threshold concerning short-term accommodation. Under the new legislation, the tax treatment of short-term accommodation would

⁵⁷ Currently, there are member states that set very high thresholds, while others do not have thresholds for the application of the SME regime. For further analysis, see to Chapter 5, Paragraph 4.

⁵⁸ Referring to Article 306 of the VAT directive

⁵⁹ The specialized VAT scheme for travel agencies ensures fair taxation across Member States. It seeks to streamline and revise the VAT regulations applicable to travel agencies that market travel packages within the European Union.

⁶⁰ Referring to Article 172 of the VAT directive.

⁶¹ This approach aligns with the OECD's stance, which has advocated for over ten years that VAT or GST should generally be applied on a destination basis. However, it also acknowledges that this approach can present significant challenges for small businesses aiming to compete in a global economy. Therefore, the OECD promotes the provision of reliefs and simplifications for small businesses engaged in cross-border trade within their jurisdictions. See OECD international VAT/GST guidelines – Draft consolidated guidelines Response by the Chartered Institute of Taxation, 2013

be clarified, equating continuous accommodation rental to hotel activity based on the conditions, criteria, and limitations of each member state. Therefore, short-term rental for up to 30 days would be considered a short-term accommodation service akin to hotel activity, while continuous rental beyond 30 days would be regarded as short-term property leasing.

Consequently, the sale of continuous accommodation services for up to 30 days would not qualify for the VAT exemption provided under Article 135, paragraph 1 of the VAT directive about property leasing. As per paragraph 2 of Article 135, the exemption does not apply to hotel activity or a similar activity as defined by the national legislation of the individual Member State, including accommodation in camping establishments.

The Commission aims to reduce the VAT deficit, and by deploying adequate resources for control, it would be possible to collect VAT revenues more efficiently and reduce the VAT deficit. Following the proposed changes, the Commission estimates that its proposals would increase EU VAT revenues by €24-66 billion, also leading to savings of approximately half a billion euros in costs related to VAT treatment in the platform economy in the EU during the period 2023-2032. Additionally, administrative costs of VAT could decrease if platforms act as collection agents.

3.3 Recent Discussions and Developments.

Recent developments have seen Estonia lead in the failure of the EU Finance Ministers' political agreement on the ViDA Proposal during the ECOFIN meeting on May 14, 2024. Despite having approved Articles 1 and 3 of the ViDA Proposal, Estonia exercised its veto vote, seeking to obtain a compromise with member states on the voluntary application of the platform deemed supplier obligations.⁶²

The likely revised proposals and a delay of two and a half years from the original ViDA Proposal of December 2022 will now see the current Belgian Presidency of the EU Council attempt to reach an agreement with Estonia by the next ECOFIN meeting scheduled for June 21, 2024.

Finding agreements and compromises in fiscal matters is particularly challenging due to the unanimity requirement. However, the Belgian Presidency and the European Commissioner for Economic and Monetary Affairs, argue that the proposed compromise is very balanced and that all member states should accept it without further concessions. The Belgian Presidency has urged Estonia to lift its reservation in the spirit of compromise. The Presidency maintains that the benefits of the reform for tax authorities, platforms, and service providers are essential for the proper functioning of the single market and is not willing to approve the entry into force of only part of the directive, namely Articles 1 and 3.

However, Estonia is concerned about the deemed supplier provision, arguing that it contradicts VAT neutrality. Estonia contends that this constitutes an unjustified departure from the core VAT principle. Furthermore, from

⁶² See [pdf \(europa.eu\)](https://ec.europa.eu/economy_finance/press/2024/05/14/20240514_vinda_en).

the Estonian perspective, the proposed regime differentiates the tax treatment of the same services depending on whether they are provided through a platform, potentially resulting in higher costs for the consumer. It has also been argued that the regime created with ViDA would create additional burdens even for member states like Estonia that do not apply a special SME regime.

From the Estonian point of view, the compromise would only be acceptable if the opt-in system were in place, ensuring neutrality without imposing additional burdens on member states that choose not to participate. However, the option proposed by Estonia was not seen as a compromise by the Belgian presidency and do not find the approval from the other 26 member states.

CHAPTER 4: VAT and Digital Platforms within and outside Europe.

4.1 OECD's Strategies for Managing Digital Economy Challenges.

The OECD approach supports the mechanism for collecting and paying of VAT within a comprehensive regime of digital platform responsibility. Under this regime, the digital platform assumes full VAT responsibility as if it had received the supply from the underlying supplier and subsequently made the sale directly to the customer in the tax jurisdiction. The term "digital platform" represents an evolving concept closely linked to the development of the digital economy.⁶³ In general, the OECD uses this term to refer to actors in online sales of goods and services who perform functions relevant to the involvement of tax authorities in VAT collection.⁶⁴

The OECD suggests that tax authorities consider certain specific key criteria when deciding whether digital platforms should be involved in VAT/GST collection. These criteria include the platform's ability to comply with various obligations. Consequently, it is reasonable to presume that a platform can fulfil these obligations if it meets two conditions:

a) it holds or has access to sufficient and accurate information to make the proper determination of VAT/GST.

b) it has the means to collect VAT/GST on the supply.

Table 1 List of possible functions (indicators) considered relevant for enlisting digital platforms under full VAT/GST liability regime

Functions that may trigger the eligibility of digital platform for the full VAT/GST liability regime	Functions that may exclude digital platform from eligibility for the full VAT/GST liability regime
Controlling and/or setting the terms and conditions of the underlying transactions (price; payment terms; delivery conditions, etc.) and imposing these on participants (buyers, sellers transporters...);	Only carries content (e.g. makes only the Internet network available for carrying content via Wi-Fi, cable, satellite, etc.);
Direct or indirect involvement in the payment processing (either directly or indirectly through arrangements with third parties, collect payments from customers and transmit these payments to sellers less commissions etc.);	Only processes payments;
Direct or indirect involvement in the delivery process and/or in the fulfilment of the supply (influencing/controlling the conditions of delivery; sending approval to suppliers and or instructing a third party to commence the delivery etc.)	Only advertises offers;
Providing customer support services (returns and/or refunds/assistance with dispute resolution).	Only operates as a click-through/shopping referral platform.

Source: OECD research.

⁶³ Oecd provided multiple definitions of digital platforms for different purposes. See Eurofound (2018), Working conditions: Overview of new forms of employment 2018 update, Publications Office of the European Union, De Stefano, V. (2016), The Rise of the 'Just-in-Time Workforce': On-Demand Work, Crowd Work and Labour Protection in the 'Gig-Economy'.

⁶⁴ OECD (2019), The Role of Digital Platforms in the Collection of VAT/GST on Online Sales, OECD, Paris. www.oecd.org/tax/consumption/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales.pdf

In this regard, the OECD has initiated the development of internationally accepted standards and measures for the efficient involvement of digital platforms in VAT/GST collection on online sales.⁶⁵

Rules currently in force in some jurisdictions show variations in the definition of "digital platforms" and consequently in the entities involved in the rule.⁶⁶ The OECD generally acknowledges the importance of carefully designing such rules, avoiding exposing intermediaries to excessive liabilities or obligations that could hinder their activity in certain markets.

The use of detailed indicators to include or exclude platforms from a full VAT liability regime has the advantage of increasing certainty for both digital platforms and tax authorities. Therefore, it is evident that implementing a VAT liability regime for digital platforms is a complex matter requiring a detailed analysis of platform business models and e-commerce dynamics to clearly identify which platforms to hold accountable. Cooperation between tax authorities, digital platforms, and the entrepreneurial community is essential to develop effective and efficient tax regimes considering the digital world's challenges and opportunities. The OECD Guidelines also suggest that making the OSS system available to digital platforms would facilitate compliance with the VAT liability regime.⁶⁷

However, it is easy to hypothesize that with the emergence of new platforms, which may not be assimilated into existing regulations due to slightly different characteristics, suppliers may use them to provide their services without being subject to VAT payment. Therefore, to address this potential future issue, it is essential to carefully consider and deliberate on the most effective methodology for identifying platforms affected by the various reforms that are gaining traction globally.⁶⁸

4.2 VAT and Digital Platforms in European Countries.

The emergence of new forms of business modalities within the virtual realm and digital platforms coincided with the financial crisis in the United States in 2008, subsequently spreading to Europe with profound repercussions. Moreover, the onset of the pandemic has drastically augmented the utilization of such platforms.⁶⁹ This inherently intricate context has underscored the imperative for new regulations at a global scale, particularly for the nascent digital economies lacking regulatory frameworks. Historically, small businesses and private individuals were considered to have minimal influence on market competition compared to VAT-registered businesses, thus benefiting from a specialized regime to alleviate tax compliance burdens and reduce regulatory pressures. However, in the contemporary landscape, primarily online within

⁶⁵ OECD. „The digital platform as the person liable for the VAT/GST on online sales (platform VAT/GST liability regimes)“, Paris, 2019

⁶⁶ Many state legislations do not provide definitions of digital platforms.

⁶⁷ Jetten, D. N. L. (2021). The VAT liability of digital platforms: the EU rules in the light of the OECD Guidelines.

⁶⁸ Gruevski, I., & Gaber, S. (2021). The Full VAT/GST Liability Regime of Digital Platforms in the Collection of Taxes on Online Sales. *Journal of economics*, 6, 119-134.

⁶⁹ Tomo, A. (2023). La Corte di Giustizia UE sul “caso Airbnb” Italia: Riflessioni in merito al progressivo coinvolgimento delle piattaforme digitali nell’alveo dei soggetti dell’obbligazione tributaria. *Rivista di diritto tributario Pacini Giuridica*.

sectors such as accommodation and transportation facilitated by platforms, an indeterminate yet undoubtedly substantial number of individuals and small businesses offer services and compete successfully with traditional VAT-registered enterprises.

In response to initiatives undertaken at the international level, such as those by the OECD, which provide non-binding resolutions awaiting legally binding supranational legislation (for instance, at the EU level)⁷⁰, individual states have begun to regulate global digital entities locally. However, this has resulted in disparate regulations and taxation for the same digital service across different states.⁷¹

For the analysis conducted in this chapter, the various legislations currently in force in five European states are examined, with particular reference to two of the most prominent digital platforms prevalent in the market, operating in the transportation and accommodation sectors. The first platform scrutinized is the short-term accommodation platform Airbnb, which garners over half of its users' preferences over traditional hotels. Furthermore, in Europe, accommodation rates offered through such platforms can average 8% to 17% lower than local hotel daily rates, thereby pitting traditional hotels against numerous short-term accommodation providers offering VAT-exempt lodging.⁷² The second platform examined is the passenger transport digital Platform Uber in the transportation sector, which has generated protests both within and outside Europe since its inception. After numerous industry association protests highlighting market competition distortions caused by Uber's advent, the app has faced bans, suspensions, or reductions in various national jurisdictions.

The inadequacies of European legislation have prompted some member states to autonomously intervene in regulating these sectors from a fiscal perspective.⁷³

The chosen states for this analysis—Italy, France, Germany, Spain, and Greece—were selected due to their status as major tourist destinations in Europe, boasting expansive accommodation and transportation service markets. Notably, the first three countries listed also exhibit the highest VAT GAP among member states.^{74,75}

⁷⁰ Fenix International, a VAT-registered company based in the United Kingdom, contested the legality of the EU regulations imposing VAT liability on platforms. In its ruling in case C-695/20, the European Court of Justice (ECJ) affirmed the VAT liability of digital platforms.

⁷¹ For instance, some member states may implement thresholds or exemptions for small businesses selling digital services to consumers in other EU countries, while others may not. Furthermore, there are also variations in the definitions used by member states. Therefore, given the increasingly pivotal role of these intermediaries in managing EU VAT, it would be highly beneficial to introduce a harmonized definition of such intermediaries within the VAT legislation. This would ensure that businesses and entities affected by this reform across all member states are equally informed about their potential inclusion under these regulatory provisions.

⁷² Farmaki, A., Miguel, C. (2022). Peer-To-Peer Accommodation in Europe: Trends, Challenges and Opportunities. In: Česnuitytė, V., Klimczuk, A., Miguel, C., Avram, G. (eds) *The Sharing Economy in Europe*. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-86897-0_6.

⁷³ DLA Piper, CROSS-BORDER SUPPLIES OF INTANGIBLE SERVICES, DIGITAL CONTENT AND RIGHTS Global Guide to VAT on Digital Services, 2021, See [2021 Global Guide to VAT on Digital Services.pdf \(betterregulation.com\)](https://www.betterregulation.com/2021-global-guide-to-vat-on-digital-services.pdf).

⁷⁴ The reason Germany exhibits a significant VAT GAP primarily lies in tax non-compliance, where a substantial portion of VAT-liable transactions is not accurately recorded or reported to tax authorities. This can stem from various factors, including tax evasion, failure to register transactions, or incorrect tax reporting. Additionally, it may be influenced by inadequate enforcement of tax laws or inefficiencies in tax collection systems.

⁷⁵ Differences in VAT Gap estimations among EU countries mirror the varying levels of tax compliance, fraud, avoidance, bankruptcies, insolvencies, and tax administration effectiveness across Member States.

Consequently, comprehending the current situation in these nations is pivotal, and evaluating the proposed reform's impact on these states is crucial to ascertain its efficiency and alignment with its intended objectives.

From this perspective, the current legislative landscape in these five member states is therefore evaluated within the context of the necessity to regulate business forms. Following the indications of the communication of June 2, 2016, entitled "A European Agenda for the Collaborative Economy",⁷⁶ which invited Member States to impose proportionate and equitable obligations, as well as to apply tax obligations functionally equivalent to those imposed on businesses offering similar services, several European nations have acknowledged the need for regulatory revisions aimed at addressing fiscal concerns within the digital sphere. The objective of such Commission's communications was to unlock the potential of the collaborative economy and streamline the creation of new opportunities to aid tax authorities and taxpayers in fulfilling their fiscal obligations.

4.2.1 Italy.

Currently, if one rents out a room to guests in Italy, the provider must determine whether to apply VAT on the rental fee to be paid to the Italian tax authorities. In this state, generally, those engaged in commercial activities must charge VAT once they meet the criteria for VAT registration.⁷⁷ Starting from 2021, a presumption of commercial activity is introduced when a taxpayer rents out more than four apartments for short-term stays per fiscal year.⁷⁸ Such activities must be declared but will then be exempt from VAT except for certain exceptions. These exceptions apply in cases where, for instance, the host provides linen or cleaning services; in such cases, a VAT rate of 10% will apply. This amount must be collected from guests and declared and paid through monthly or quarterly periodic declarations. Additionally, there are further VAT regimes aimed at simplifying the VAT process for small businesses.⁷⁹

For those who provide transportation services through the Uber platform in Italy and are not part of the professional taxi category, which entails a separate tax regime,⁸⁰ registration is required. This registration is for the collection of VAT on the sale of services and will be settled together with the VAT declaration to the Italian tax authorities. If the service provider has a VAT number, they will have the possibility to deduct fuel

See Il Post. (2023). L'Italia è il primo paese nell'Unione europea per evasione dell'IVA. L'Italia è il primo paese nell'Unione europea per evasione dell'IVA - Il Post, 2023.

See European Commission, Directorate-General for Taxation and Customs Union, Poniatowski, G., Bonch-Osmolovskiy, M., Śmietanka, A. et al., VAT gap in the EU – 2023 report, Publications Office of the European Union, 2023, <https://data.europa.eu/doi/10.2778/911698>.

⁷⁶ European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, COM(2016) 356 final EUR-Lex - 52016DC0356 - EN - EUR-Lex (europa.eu) 2016

⁷⁷ Referring to the case of fiscal regulations on short-term rentals as per Article 4 of Law Decree No. 50 of April 24, 2017, converted into Law No. 96 of June 21, 2017, this provision has for the first time impacted the regime to be applied to lease fees derived from digital platforms and their obligations of communication, and, in certain cases, of withholding agent. Further changes come from Law Decree 145/2023, which imposes new rules for those renting residential units with short-term lease agreements. Now, electronic communication is required through a dedicated portal, managed by the Ministry of Tourism, serving as the national Database.

⁷⁸ Law no. 178 of December 30, 2020, article 1, paragraph 595 (Budget Law).

Article 4, D.L. 50/2017 defines short-term leases as rental agreements for residential properties with a duration not exceeding 30 days. This includes agreements that provide linen and cleaning services, entered into by individuals, outside of business activities, either directly or through real estate intermediaries or online platforms connecting property seekers with landlords.

⁷⁹ See Airbnb, Italia – Aspetti fiscali sulle locazioni brevi, 2022 Airbnb - Tax Guide 2023 - Italy - Italian.docx

⁸⁰ L. n. 21/1992.

or car repair costs from the VAT collected. If the subject's turnover is less than €85,000,⁸¹ then the driver can opt for a SME regime enjoying administrative simplifications and lower taxation.⁸² This special regime involves registering the VAT number with the VIES (VAT Information Exchange System),⁸⁴ which is a specific list to be authorized to make sales/purchases in EU countries. This list is maintained by the Revenue Agency, and with VIES registration, drivers do not charge VAT on their services, do not request VAT refunds on expenses associated with their activity, declare and pay VAT on purchases of services from abroad, and finally, declare sales made to companies in EU countries.⁸⁵ It is also expected that a VAT number will be provided in the Uber tax profile.

4.2.2 France.

In France, there are slight differences compared to Italian regulations. Rental of accommodations is exempt from VAT, but if a host permanently rents out a residence and provides at least three services such as breakfast, provision of linen, reception, and cleaning (thus resembling services provided by a hotel),⁸⁶ in such cases, despite providing short-term accommodations, the individual must register for VAT purposes and apply a 10% tax rate.⁸⁷ Similarly, an exemption applies in the case of a small business with an annual turnover below €82,800.⁸⁸ Another differentiation in France is linked to the requirement for non-resident entities with accommodations in France to register for VAT purposes without being eligible for the small business threshold. Additionally, in France, VAT declarations can be submitted quarterly if the VAT due is less than €4,000 annually.⁸⁹

Regarding the US-based transportation service platform, there is a difference in France as there is a provision for a mandatory VAT registration threshold set at €36,800.⁹⁰ If this threshold is not met, it will be possible to request voluntary VAT registration or opt for a VIES-only registration for small business regimes and request a VAT number even if the threshold is not reached.⁹¹

⁸¹ See Law No 197 of 29 December 2022 on the estimated state budget for the 2023 financial year and the multiannual budget for the 3 year period 2023 to 2025, See [Schede - Regime forfetario - Che cos'è - Agenzia delle Entrate \(agenziaentrate.gov.it\)](https://www.agenziaentrate.gov.it/).

⁸² Invest in Italy - Flat-rate scheme - Agenzia delle Entrate. <https://www.agenziaentrate.gov.it/portale/web/english/flat-rate-scheme>

⁸³ See [Adempimenti IVA per autisti partner Uber in Italia](#), 2023

⁸⁴ The VAT Information Exchange System (VIES) functions as a search engine, distinct from a database, and is under the ownership of the European Commission. Information accessed through VIES is sourced directly from national VAT databases upon user queries. The output yielded by the VIES tool presents in one of two possible states: either EU VAT information is confirmed as valid or deemed invalid due to its absence.

⁸⁵ See n. 73. Entities applying the SME regime, introduced by Law 190/2014, do not charge VAT on invoices as a pass-through and consequently do not have the right to deduct the tax paid, due, or charged on purchases.

⁸⁶ Tourist hotels and holiday villages are categorized based on a star rating system overseen by the Agence touristique de la France (Atout France). For further details, please refer to [Accueil | Atout France \(atout-france.fr\)](https://www.atout-france.fr/).

⁸⁷ Code général des impôts : article 278 bis

⁸⁸ As a micro-enterprise, one benefits from VAT exemption, meaning VAT does not need to be invoiced to customers, and thus, it does not need to be paid to the State. Invoices must be marked with the wording "VAT not applicable, article 293 B of the General Tax Code (CGI)." However, a micro-entrepreneur may become subject to VAT if turnover thresholds are exceeded. Exemption thresholds are based on taxable turnover: For service providers (craftsmen and liberal professions), the VAT exemption threshold is €36,800 excluding VAT. For the purchase and sale of goods (traders), this threshold is €82,800 excluding VAT.

⁸⁹ Airbnb, FRANCE – TAX CONSIDERATIONS ON SHORT TERM PROPERTY LETS, 2023, [Airbnb - Tax Guide 2023 - France.docx](#)

⁹⁰ See [Franchise en base de TVA | Entreprendre.Service-Public.fr](https://www.service-public.fr/)

⁹¹ See [Uber VAT Compliance for French Partner Drivers](#), 2024

4.2.3 Germany.

What characterizes Airbnb's VAT regime in Germany is that VAT registration is required if accommodations are regularly provided with the intention of generating income.⁹² On the other hand, a host who provides vacation accommodations may be considered a small business owner if they can demonstrate that their turnover was below €17,500 in the previous year and it is not expected to exceed €50,000 in the current year. In such cases, they will not be required to submit periodic VAT declarations, issue VAT invoices, or charge VAT to guests. Similarly to France, a non-resident host with accommodations in Germany is required to register for VAT purposes regardless, and the exception for small business owners does not apply. If applicable, the applicable VAT rate for short-term accommodation rentals (i.e., less than six months) is 7% in Germany.⁹³

On the other hand, Uber is subject to a separate special regime in the city of Berlin. For the remainder of the territory, VAT collected from service provision is remitted to the Tax Authority through the annual VAT return and advance periodic VAT return.⁹⁴ VAT registration becomes mandatory if the last annual turnover of the reporting period exceeds €22,000, or even if the last annual turnover of the reporting period does not exceed €22,000. However, the estimated turnover for the current year exceeds €50,000.⁹⁵ The estimated turnover for the current calendar year is therefore taken into consideration. If turnover does not exceed these amounts, businesses can still opt to voluntarily register for the general VAT regime or request VAT registration for small businesses (for purposes such as deducting ancillary costs). In this case, a small business registration can be requested if the estimated turnover for the current year does not exceed €50,000.⁹⁶ This small business registration entails not charging VAT on services provided, not recovering VAT as deductible tax on purchases made to provide the service, declaring and paying VAT on purchases of services from abroad ("reverse-charge"), and declaring services provided to other companies in the EU.⁹⁷

⁹² Luisa Scarcella, Computer Law & Security Review, Volume 36, April 2020, 105371, E-commerce and effective VAT/GST enforcement: Can online platforms play a valuable role

⁹³ A small business owner is someone who has a turnover, plus VAT, not exceeding €22,000 in the previous calendar year and has a projected turnover, plus VAT, not exceeding €50,000 in the current calendar year. With the current well-known Annual Tax Law Project 2024, the regulation on small businesses will be extended starting from 2025. In particular, the turnover limits of €22,000 (previous year) and €50,000 (current calendar year) are to be increased to €25,000 and €100,000 respectively. The progress of the legislative process remains to be seen. See also Airbnb, GERMANY – TAX CONSIDERATIONS ON SHORT-TERM LETS, 2021, [Airbnb - Tax Guide 2021 - Germany - ENGLISH - Final.docx](#). See Bal, A.: Germany: New VAT Compliance Obligations for Online Platforms. EC Tax Review 28, 114– 119 (2019)

⁹⁴ The standard tax rate typically stands at 19%. A reduced VAT rate of 7% is applicable to authorized regular transport services provided the transportation route within Germany does not exceed 50 kilometers. See German Federal Ministry of Finance Fact sheet regarding VAT on international passenger transport services using buses or coaches that are not registered in the Federal Republic of Germany, 1 April 2024, Federal Tax Gazette I, p. XXX

⁹⁵ See Kleinunternehmerregelung at [Kleinunternehmerregelung - IHK Region Stuttgart](#)

⁹⁶ Businesses have been provided with an informal version of a draft bill for the Annual Tax Act 2024. The draft bill from the Federal Ministry of Finance (BMF) has not yet been officially published. However, reports suggest that the draft has been submitted by the BMF for early coordination within the government. The draft bill encompasses amendments to value-added tax (VAT) concerning: The place of supply for virtual services and other services, Exemptions, Input tax deduction, Small businesses. Therefore, legislative changes are imminent at this time

⁹⁷ See [Uber VAT Compliance for German Partner Drivers](#), 2023

4.2.4 Spain.

In Spain, similarly to what occurs in the German capital, a different regime is provided for the Canary Islands and two cities, Ceuta and Melilla, as these territories are not considered Spanish territories for VAT purposes. Regarding other Spanish territories, individuals or entities that regularly or occasionally engage in business activities must declare such transactions for VAT purposes. This applies when these activities involve accommodation services that do not include services typically provided by hotels, such as cleaning, catering, or laundry services.⁹⁸ In these cases, the services must be declared but will subsequently be considered exempt from VAT. Therefore, if the host only engages in this exempt activity, they are not required to charge VAT, and there are no registration obligations. In any other case, regardless of whether an individual is established in Spanish territory for VAT purposes, it is required to register for VAT purposes and apply a 10% tax rate (currently, there is no minimum threshold in Spain to determine whether a person is required to register).⁹⁹

As for Uber, the most relevant differentiation for VAT purposes in this country is that there is no turnover threshold for VAT registration.¹⁰⁰ This means that as a Partner Driver, a person should register for VAT regardless of the amount of turnover.¹⁰¹

4.2.5 Greece.

In general, individuals engaged in commercial activities in Greece must charge VAT on their supplies once the criteria for VAT registration are met. Similarly to what occurs in Spain, there are no thresholds for VAT registration, but in cases where additional services are provided to guests during their stay, the applicable tax rate, which is currently set at 13%, may not apply.¹⁰²

⁹⁸ When renting a tourist apartment, the obligation to pay VAT depends on the nature of the services provided. According to Article 5, paragraph 1c of the Value Added Tax Law (LIVA), individuals renting tourist accommodation are considered entrepreneurs for VAT purposes. However, if the accommodation does not offer typical hotel industry services, VAT is not applicable, and the lessor is not required to charge or remit VAT. On the other hand, if the rental of the tourist apartment includes services specific to the hotel industry, VAT must be applied at the reduced rate of 10% as per Article 91, paragraph 1.2.2 of the LIVA. See [Tax Agency: I rent a tourist apartment, do I have to pay VAT? \(agenciatributaria.gob.es\)](https://www.agenciatributaria.gob.es/)

⁹⁹ Airbnb, ESPAÑA –ASPECTOS FISCALES DE LOS ARRENDAMIENTOS DE CORTA DURACIÓN, 202, [Airbnb - Tax Guide 2021 - Spain - SPANISH - Final.docx](#).

Robyn Peña, A Guide to Starting an Airbnb Business in Spain, [airbtics](#), 2023 [A Guide to Starting an Airbnb Business in Spain | Airbtics | Airbnb Analytics](#).

¹⁰⁰ Operations of intermediation in contracts for the provision of services, either in one's own name or on behalf of third parties - Article 11.2.15 of the Value Added Tax Law (VAT Law). In Spain, there is no exemption threshold, meaning there is no predetermined annual turnover limit below which VAT is not applicable. See [VAT: Rates and exemptions - VAT - Taxes - Business - Your rights and obligations in the EU - Tu espacio europeo - Punto de Acceso General \(administracion.gob.es\)](#).

¹⁰¹ See [Obligaciones fiscales con respecto al IVA para conductores de Uber en España](#), 2023

¹⁰² With recent laws 4611/2019, 4607/2019, and 4591/2019, Greece made amendments to the Value Added Tax (VAT) Code regarding replacement, effective from May 20, 2019, of Annex III of the Value Added Tax (VAT) Code. Reclassification of services subject to the reduced VAT rate of 13%. Under this reclassification, the single price for accommodation with breakfast is subject to the reduced VAT rate of 13%. However, the single price for accommodation with breakfast and lunch, full board accommodation, and all-inclusive accommodation is subject to the standard VAT rate, which is proportionate to 10%, 15%, and 25%, respectively. Law 5073 of 2023 refers to short-term rentals and represents a modification in Greek law concerning such rentals. Starting from 2024, individuals renting three or more properties will be subject to VAT, as well as all taxes paid by hospitality professionals renting rooms, and they should establish a legal entity, a company. The general rule is that there is no limit on the total number of nights, however, there will be a 60-day limit per year.

In Greece, VAT registration is mandatory for engaging in commercial activities such as driving with Uber. There are no particularities compared to the systems outlined previously.¹⁰³

4.3 The global landscape – a comparative insight.

In the context of my thesis, it is essential to explore whether other legislations developed in other states, or sources of inspiration, can offer valuable insights into the efficiency of ViDA's Proposal.

It is essential to underline, firstly, that when considering the realm of services, VAT/GST legislation in numerous countries tends to define a "service" as any entity that does not fall under the category of "supply of goods".¹⁰⁴ While this generally encompasses intangibles as well, it is pertinent to note that some jurisdictions prefer to treat intangibles as a distinct category.¹⁰⁵

In this analysis, regulations that are already in force, as well as those where bills are currently being proposed in New Zealand, Canada, India, Saudi Arabia, Egypt, and Japan, are examined, highlighting any existing differences compared to the Commission's proposal.¹⁰⁶ Each nation is treated individually, highlighting only the points that will be useful to understand the global landscape and draw a comparison with the European context to grasp potential insights for implementation in Article 2. Focusing on the reasons that motivated a comparative analysis of these jurisdictions, attention is directed towards fiscal jurisdictions that have proposed domestic legislation, bearing similarities to the VAT system being developed in Europe to identify any gaps or needs it should address, drawing lessons from international experiences.

It is noteworthy that the European Union took an early initiative to tackle the digital world taxation issue in 2015, establishing that the sale of digital services to final consumers within the EU is subject to taxation based on the consumer's location, regardless of the seller's location.¹⁰⁷ However, in contemporary times, other nations have emerged as pioneers in implementing modern reforms concerning VAT in the digital platform sphere.

In New Zealand, the Wide-Ranging Tax Bill has recently passed, imposing full responsibility for collecting GST on digital platforms.¹⁰⁸ The platforms providing services now assume greater responsibility, acting as

¹⁰³ See *Uber VAT Compliance for Greek Partner Drivers*, 2021

¹⁰⁴ As underlined by OECD, *Consumption Tax Trends 2020: VAT/GST and Excise Rates, Trends and Policy Issues* PARAGRAPH 1.8.4. The destination principle also applies to cross-border services and intangibles 2020 trade.

¹⁰⁵ Globally, the primary issues arise when transactions and services are directed towards private individuals.

¹⁰⁶ The selected nations for the comparative analysis were chosen for various reasons: New Zealand is renowned for its innovative approach to fiscal policies and has a relatively simple and transparent taxation system. Canada has a Goods and Services Tax/Harmonized Sales Tax system that shares similarities with the European VAT system. By analysing its functioning, insights can be gained on harmonising and simplifying VAT. India recently introduced the Goods and Services Tax, a significant tax reform with a substantial impact on the country's economy. Studying the implementation of GST in India can provide information on managing a transition to a new tax regime. Saudi Arabia and Egypt implemented the VAT system (inspired by the European one) only recently and faced challenges similar to those the EU might encounter with the introduction of ViDA. Therefore, examining their experiences can be useful for identifying potential issues and solutions. Lastly, Japan has a well-established VAT system and can potentially offer an example of how a VAT system can be efficiently and effectively managed.

¹⁰⁷ See European Commission, explanatory notes on the place of supply TBE services, April 2014.

¹⁰⁸ The Wide-Ranging Tax Bill came into force on April 1st, 2024.

deemed suppliers.¹⁰⁹ These developments apply not only to platforms offering accommodation services falling within the category of short-term accommodations but also extend to platforms providing transportation, ride-sharing services, as well as food delivery services, along with closely related services.

Similar to the European proposal, there is a complete equating of resident and non-resident entities. The concept of deemed supplier covers both domestic and foreign digital markets (and underlying providers). The operator of the digital platform will be deemed the supplier of services provided to buyers through its digital platforms rather than the underlying providers. This holds true unless specific situations arise where the underlying registered GST provider may opt out of this deemed supplier arrangement and charge, collect, and remit GST as their own responsibility. When this is formally agreed upon between the platform operator and the underlying provider, the platform operator is relieved of reporting responsibility for the underlying seller.

Starting from April 2024, the supply through a digital platform will effectively result in the denial of the benefit of the concession offered by the NZD¹¹⁰ 60,000 threshold only for those offering services through such platforms.¹¹¹ There will therefore be a differentiated treatment between unregistered providers offering services listed through digital platforms (who will be subject to goods and services tax) and unregistered providers offering such types of services directly to buyers without using digital platforms.¹¹²

In contrast to the proposed EU regulations, New Zealand implements a flat-rate credit system that approximates the recoverable input tax. Platforms are responsible for collecting GST but return 8.5% of the collected GST to the service provider. Essentially, if the underlying supplier is not GST registered, Inland Revenue receives only 6.5% of the 15% GST charged on platforms.

Currently, Canadian legislation provides a very generic but binding definition of digital platform operator, defining it as “any person who controls or sets the essential elements of a transaction between a third-party vendor and purchaser”.¹¹³ Through this approach, new emerging entities can be readily encompassed within regulatory frameworks, thanks to the utilization of expansive and inclusive terminology, contingent upon alignment with the legislative body's future intent.

Effective as of July 1, 2021, Canadian legislation introduced specific rules that apply to platform operators facilitating the provision of short-term accommodations.¹¹⁴ Rentals of dwellings to individuals for periods of

¹⁰⁹ K.J. (Kevin) Holmes, New Zealand - Corporate Taxation sec. 13., Country Tax Guides IBFD (accessed 16 Apr. 2024).

¹¹⁰ NZD stands for New Zealand Dollar, which is the official currency of New Zealand. The symbol for the New Zealand Dollar is \$, and it is often abbreviated as NZ\$ to distinguish it from other dollar-denominated currencies.

¹¹¹ New Zealand - Digital Taxation Monitor, Tables IBFD (accessed 16 Apr. 2024).

¹¹² Matthew Seddon and Campbell Pentney, New GST rules for accommodation and transportation services provided by digital platforms, 2022. New GST rules for accommodation and transportation services provided by digital platforms - Bell Gully. <https://www.bellgully.com/insights/new-gst-rules-for-accommodation-and-transportation-services-provided-by-digital-platforms/>

¹¹³ See [Definitions for the digital economy - Canada.ca](#).

¹¹⁴ Canada - Digital Taxation Monitor, Tables IBFD (accessed 16 Apr. 2024).

less than 30 days and with a daily rate exceeding \$20 per night are generally subject to GST.¹¹⁵¹¹⁶ According to the Fall Economic Statement (FES) of 2020,¹¹⁷ if property owners are not registered for GST purposes in Canada, the accommodation platform operator they rely on will be deemed the supplier of short-term accommodations and will be responsible for GST collection. These changes were introduced to ensure a level playing field between resident and non-resident businesses in Canada, as previously only resident providers were subject to GST, making their products and services more expensive than non-resident digital service/product providers.

Canadian legislation is highly detailed, it leaves no room for misunderstandings and numerous safe harbour rules are included to protect digital platforms. Platform operators rely on information provided by third-party suppliers to determine whether they should collect and remit tax on short-term accommodation supplies they facilitate. It is specified that in case of false or omitted declarations by third-party suppliers, both the platform operator and the third-party supplier are jointly liable for tax collection and remittance. However, their liability is limited if the platform operator acted in good faith¹¹⁸ and could not reasonably be aware of the third-party supplier's false declaration. In the event of a false declaration by a third-party supplier, the platform operator is, therefore, not liable for the failure to collect and remit tax. In such cases, the platform operator is exempt from liability to the extent that, without fault, they did not collect and remit the tax (i.e., if they partially collected the tax, they remain liable for those amounts), and the third-party supplier is responsible for the uncollected amounts.¹¹⁹

Furthermore, since platform operators often apply the same conditions to all suppliers they deal with, there is a risk that these entities may charge and collect taxes on their behalf regardless of the suppliers' registration status. It can result in GST being remitted by the wrong party or twice (both by the non-resident seller and the platform operator). To mitigate the high uncertainty and complexity of such a situation, the Canada Revenue Agency has published a decision tree to assist in assessing collection obligations.¹²⁰

Differently, the Indian legislature, effective January 1, 2022, has mandated that non-resident providers of OIDAR (Online Information Database Access and Retrieval) services solely to non-taxable online recipients

¹¹⁵ The reason why the threshold for VAT in e-commerce doesn't work well is that it creates disparities and complexities in the taxation of cross-border transactions, especially for small businesses.

¹¹⁶ See European Commission, VAT for the Platform Econom. Retrieved from https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-e-commerce_en.

¹¹⁷ See Archived - Annex 4 | FES 2020 (canada.ca)

¹¹⁸ See the Supreme Court of Canada's decision in the important case of *Bhasin v Hrynew* for a definition of Good faith under Canadian laws.

¹¹⁹ See GST/HST for digital economy businesses - Platform-based short-term accommodation [Platform-based short-term accommodation: GST/HST for digital economy businesses - Canada.ca](https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses/digital-economy-gsthst/charge-collect/platform-based-accommodation.html).

¹²⁰ The Government of Canada announced in the Federal Budget on April 19, 2021, that the Canada Revenue Agency (CRA) would collaborate closely with businesses and platform operators to assist them in fulfilling their responsibilities. Currently, it is possible to find decision-making frameworks, as outlined on the dedicated page featuring various examples on the Government of Canada's website. These examples include detailed step-by-step explanations accompanied by images. Please refer to the following link for further information: <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses/digital-economy-gsthst/charge-collect/platform-based-accommodation.html>

in India to register for, collect, and remit GST on specific supplies facilitated by their sellers through platforms¹²¹. In identifying the affected services, a uniform approach is adopted without distinction between the gig economy and the sharing economy.¹²² The obligated platforms see a considerable list of sectors involved, including passenger transport, accommodation services, domestic cleaning services, non-restaurant-based service offerings foods and drinks.¹²³ The Finance Act of 2023 has further removed the terms "minimal human intervention" and "essentially automated" from the definition of OIDAR services, creating even greater inclusivity in the legislation and equal treatment among the various services provided online and through digital platforms.¹²⁴

Article 47(2) of the Saudi Arabia VAT Implementing Regulations specifies that if electronic services are rendered within the Kingdom through an online interface or portal serving as an intermediary for a non-resident supplier, the operator of that platform assumes VAT responsibility.¹²⁵ Furthermore, digital platforms may be considered deemed suppliers under the general taxable person definition outlined in Article 9 of the Saudi Arabia VAT Law.¹²⁶ In contrast to Article 9a of the EU VAT Implementing Regulations, Saudi Arabia argues that the reseller provision for marketplaces and online platforms applies exclusively to electronic services provided by non-resident suppliers.

For all non-resident entities, there is no distinction made between B2C and B2B supplies, and the platform assumes VAT responsibility unless the non-resident provider is explicitly identified as the supplier throughout the online purchasing process, in the contractual agreements between the involved parties and on the invoice or receipt provided by the interface or portal operator. The second requirement is that simultaneously, the interface or platform operator neither authorizes the customer to be billed for the goods or services themselves nor establishes the general terms and conditions of the transaction.

Article 24 of the Saudi Arabia Implementing Regulations also provides a non-exhaustive list of services falling within the definition of electronic services for VAT purposes, falling within the category defined as "wired and wireless telecommunication services and electronic services".¹²⁷ Furthermore, the ZATCA elaborates in its guidelines that the digital economy is expanding rapidly. Consequently, new forms of electronic services

¹²¹ Bhardwaj, N. (2023). Digital Services in India: Tax Applicability and Compliance. India Briefing.

¹²² The gig economy is characterized by flexible and temporary jobs, where companies prefer hiring freelancers independently through online platforms, thus enhancing service efficiency and accessibility. Just Eat is an example of a gig economy platform. The sharing economy is centered on the online sharing of goods/services, facilitating asset monetization and resource utilization. Platforms like Airbnb connect owners of unused assets with seekers, offering more affordable accommodations and additional income opportunities.

The key distinction lies in the gig economy's emphasis on service provision, while the sharing economy focuses on the shared utilization of assets through online platforms.

¹²³ India - VAT & Sales Tax Table, Tables IBFD (accessed 16 Apr. 2024). https://research.ibfd.org/#/doc?url=/document/vatst_in

¹²⁴ KPMG India: Changes to GST online information database access and retrieval (OIDAR) rules Philippe Stephanny, Chinedu Nwachukwu, 2023

¹²⁵ Page 36, [zatca.gov.sa/en/RulesRegulations/Taxes/Documents/Implementing Regulations of the VAT Law_EN.pdf](https://zatca.gov.sa/en/RulesRegulations/Taxes/Documents/Implementing%20Regulations%20of%20the%20VAT%20Law%20EN.pdf)

¹²⁶ At page 6, the guidance provides several examples of situations in which the intermediary is regarded as an undisclosed agent. [SaudiVATlaw-bilingual \(Logo\) 01 copy \(zatca.gov.sa\)](https://zatca.gov.sa/en/Legal/SaudiVATlaw-bilingual%20(Logo)%2001%20copy%20(zatca.gov.sa).pdf)

¹²⁷ Tomo, A. (2023). La Corte di Giustizia UE sul "caso Airbnb" Italia: Riflessioni in merito al progressivo coinvolgimento delle piattaforme digitali nell'alveo dei soggetti dell'obbligazione tributaria. Rivista di diritto tributario Pacini Giuridica.

delivered via the internet or other electronic channels will also be considered falling within the same category. Therefore, no specific and explicit definition of an online interface or portal is provided. The ZATCA interprets this to encompass an electronic website, electronic marketplace, or a comparable platform that enables the exchange of goods or services from a supplier to a customer and facilitates the completion of transactions. Saudi Arabia's legislation does not establish a threshold regarding the level of human involvement in providing electronic services.¹²⁸ Additionally, there is no VAT registration threshold for non-resident e-services providers.

Similarly to what occurs in Saudi Arabia, with Decree 24 of 2023,¹²⁹ the Egyptian Ministry of Finance also issued guidelines concerning the VAT solely applicable to digital services (including those offered through platforms) provided remotely by non-residents, distinguishing it from the regulations for resident providers. Article 1 of the VAT Law Executive Regulations¹³⁰ provides a comprehensive definition of electronic distribution platforms, identifying them as "A visible digital interface, including but not limited to a website, internet portal, e-commerce platform, online marketplace, or any similar interface, that enables the interaction between the provider of goods or services and the recipient or beneficiary, facilitating the delivery or performance of the said goods or services through it".

The Japanese Cabinet has approved the outline of the 2024 tax reform package, which covers various tax areas, including the implementation of a comprehensive VAT liability regime for Digital Platforms, akin to the approach adopted in Europe.¹³¹ These measures are set to take effect on April 1st, 2025. The Japanese tax authorities aim to delineate and periodically publicly announce the roster of relevant platform operators, who will subsequently be obliged to notify foreign enterprises accordingly.¹³² Consequently, there will be no monetary threshold to identify the platforms involved.¹³³

¹²⁸ ATCA, Guideline Agents (July 2020), available at <https://zatca.gov.sa/en/HelpCenter/guidelines/Documents/Agents%20Guideline.pdf> (accessed 6 Dec. 2023)

¹²⁹ Corresponding to the previously issued Law 3/2022 that amends Amending Some Provisions of the Value Added Tax Law Promulgated by Law 67 of the Year 2016 and the Stamp Duty Law Promulgated by Law 11 of the Year 1980, Law 3/2022, Issue 3, Official Journal.

¹³⁰ Executive Regulations of the Value Added Tax Law 67 of the year 2016.

¹³¹ Japan - Japan Discusses VAT Treatment of Digital Platforms (05 Oct. 2023), News IBFD (accessed 16 Apr. 2024). The METI's VAT reform proposal dated 31 August 2023 [20230731002-1.pdf \(meti.go.jp\)](#).

¹³² Japan - Japan Outlines 2024 Tax Reform Package Including Additional Global Minimum Tax Guidance, VAT Treatment for Digital Platforms and Crypto Asset Reporting Framework (28 Dec. 2023), News IBFD (accessed 17 Apr. 2024).

¹³³ Under this new framework, the government aims to confront non-compliant foreign enterprises and anticipates an annual VAT leakage of JPY 18 billion to be rectified through collection efforts.

CHAPTER 5 : Arguments.

5.1 Introduction.

The widespread of digital platforms has sparked increasing global interest, bringing new concerns and the need to adapt existing regulations to the rapid evolution of the digital economy. This analysis will start from the core issue, first understanding the role of platforms as intermediaries without contextualizing it and comparing it with other institutions. It will examine why the role of digital platforms as intermediaries is an efficient method for tax collection and evaluate the validity of the logic behind the proposal to assign them more significant responsibilities in tax collection.

Subsequently, it will be assessed whether Article Two aligns with the OECD approach, as the EU commits to respecting and adhering to it. Although non-binding, this commitment reflects the EU's willingness to adhere to the standards and international policies promoted by the OECD in all areas to foster economic cooperation and sustainable development globally.¹³⁴

After examining the core of the legislative proposal, the analysis will focus on evaluating legislations currently in force in various Member States, aiming to identify insights that the Commission could adopt to enhance its proposal while ensuring coherence and harmonization. Finally, other global legislations and stakeholders' opinions will be examined, considering aspects such as administrative burdens, compliance costs, and revenue implications, to identify potential challenges and find sustainable solutions over time.

5.2 Redefining Tax Responsibilities: Exploring the Role of Digital Platforms as Intermediaries.

The comparison between traditional and digital economies, driven by technological developments, is a recurring theme. As demonstrated by the music CD sector, which has been completely engulfed and nearly erased due to competition with digitally provided music in recent years, digital evolution has often resulted in a fiscal transition. In attempting to restore fair competition, additional levies have typically been favoured over VAT exemption for the struggling traditional sector.¹³⁵ Such an approach reflects the need to adapt regulatory frameworks to new economic realities, ensuring equity and sustainability within the context of modern taxation.

It is undeniable that digital platforms have assumed an increasingly significant role within our society. Therefore, in the eyes of the European Commission, it does not seem unreasonable to attribute to them a

¹³⁴ The European Commission actively engages in the activities of the OECD under the Supplementary Protocol to the Convention on the Organisation for Economic Co-operation and Development. This involvement extends beyond passive observation, demonstrating a commitment to collaborate fully in pursuing the fundamental objectives of the organization.

¹³⁵ B.G. van Zadelhoff, *Of de BTW het redt met Telecom Internet*, Deventer: Kluwer 1996.

proportional and greater responsibility in fulfilling the direct and indirect tax obligations on behalf of the operators who use their services. Although the platforms themselves may dissent from this approach, it proves practical as it allows tax administrations to address only a restricted group of taxpayers who, particularly following the European Regulation 2021/514 DAC7,¹³⁶ are already required to possess and communicate a series of tax data of their actual providers to the Tax Revenue Agency.¹³⁷

The deemed supplier provision and the role envisioned by the Commission for platforms share similarities with the dynamics and concept of the tax withholding agent established in the field of direct taxes. In both phenomena, there is indeed a normative transfer of the tax burden, whereby the transfer of the financial burden is imposed by legislative discipline. Typically, in VAT, the transfer is envisaged through mandatory pass-on which, together with the right of deduction, allows for the identification of the economic force affected by the tax in consumption. The withholding agent is an intermediary who, by virtue of a legal provision, acts as a conduit between the taxpayer and the Tax Revenue Agency, which undertakes to pay taxes on behalf of others, usually enjoying mandatory pass-on through which the legal transfer of the tax burden is realized. Therefore, this entity is different from the actual taxpayer, i.e., different from the real owner or supplier of the wealth on which the tax is levied. A concrete example of this dynamic is represented by the Italian flat-rate tax regime for direct taxes, already in force in Italy for interfaces such as Airbnb.¹³⁸ In this context, when payment is made digitally through the platform, the latter assumes the role of service provider, effectively becoming the passive subject that interacts with the tax authorities.

Given the widespread use of these platforms, it is not inappropriate to hold them accountable, as centralizing tax and contributory responsibilities through a single entity (as has occurred in companies where the entrepreneur has taken on the role of substitute or tax manager, replacing his employees who are the de facto taxpayers) has proven effective since the 1970s, during the period of mass taxation dissemination.¹³⁹

The tax withholding agent role and the role envisaged by the deemed supplier provision both imply the responsibility to withhold and remit taxes directly due to the Tax Revenue Agency, efficiently acting as intermediaries between the taxpayer (the income beneficiary) and the State. However, while in the case of the withholding agent, the intermediation concerns direct taxes, conversely, in the case of digital platforms and the deemed supplier today, the focus is on VAT, and issues arise because this reform seeks to apply to categories

¹³⁶ In March 2021, the EU implemented its own set of communication rules by Council Directive 2021/514 of 22 March 2021, amending the European directive 2011/16/EU on administrative cooperation in the field of taxation. These extend EU transparency rules to digital platforms and introduce an obligation for platform operators to provide information on income sellers earned through the platforms, starting from 2023.

¹³⁷ Richtlijn (EU) 2021/514 van de Raad van 22 maart 2021 tot wijziging van Richtlijn 2011/16/EU betreffende de administratieve samenwerking op het gebied van de belastingen, *PbEU* L 104, 25 maart 2021, p. 1-26.

¹³⁸ This new provision is included in the 2024 Budget Law (Article 1, paragraph 63, Law No. 213/2023). Effective January 1, 2024, the flat-rate tax rate for short-term rentals increases from 21% to 26%.

¹³⁹ Ezio Vanoni, Italian Minister of Finance, contributed to this approach by emphasizing the importance of collaboration between the public and private sectors to ensure an efficient tax system.

Marongiu G., Ezio Vanoni ministro delle finanze, in *riv. Dir. Fin. Sc. Fin.*, 3, 2016, 350.

of operators who were previously not generally considered taxable persons for VAT purposes. Facilitative purposes unite these two institutes for tax administration, and similarities in the functionality of the role can be found as they both aim to ensure greater regularity in tax payments, simplification of tax obligations, and stability of the tax system.

Moreover, the two roles being compared share the same functionality of simplifying tax collection, as they reduce the number of entities with which the tax authority must interact. This occurs with regard to platforms as they have no interest in not paying the sums withheld for VAT purposes to the State, given the continuous checks and the importance of their reputation. At the same time, the substitute (actual supplier) does not concretely have the possibility to engage in evasive behaviours regarding the sum withheld by the substitute for VAT purposes.

In Italy, Airbnb recently announced that it had reached an agreement with the Italian Revenue Agency regarding the withholding tax on income earned by non-taxable person service providers, committing to pay a total of 576 million euros to the Italian authorities. Furthermore, in response to provisions outlined in the Italian Budget Law clarifying the responsibilities of platforms in tax withholding, Airbnb is developing a mechanism for withholding and remitting taxes to the Italian tax authorities. The investigation highlighted Airbnb's role as a tax withholding agent, underscoring the platform's obligation to settle accounts on behalf of property owners. Consequently, it is imperative to acknowledge that attributing tax responsibilities to platforms is a well-established practice in Italy, contributing to the efficiency of tax collection efforts and combating non-compliance. In response to controversies arising, as in *Airbnb Ireland UC, Airbnb Payments UK Ltd Versus Agenzia delle Entrate* dispute,¹⁴⁰ the Advocate General emphasized that the tax obligations and responsibilities attributed to platforms do not constitute discrimination but are justified in pursuing efficient tax collection and combating evasion.¹⁴¹ These reasons are legitimate in the context of the European Union, as imposing the responsibility for tax payment on a third party who is not directly involved in evasion contributes to ensuring the integrity of the internal market. Therefore, assigning tax responsibility to a third party, as in the case of the tax withholding agent, or to digital platforms in the case of VAT, responds to the need to ensure compliance with tax obligations by those who would not necessarily have an interest in evading them.¹⁴²

In conclusion, it is evident that attributing tax responsibilities to platforms is not discriminatory but justified in pursuing efficient tax collection and combating evasion and non-compliance issues. Overall, considering digital platforms as intermediaries enhances tax administration efficiency, ensures the integrity of the internal market, promotes compliance, and supports fair competition. Even if the management of direct taxes is a task

¹⁴⁰ The Italian Revenue Agency.

¹⁴¹ Case C-83/21, Opinion of Advocate General Szpunar delivered on 7 July 2022

¹⁴² In light of the established European jurisprudence, exemplified by cases such as C-470/04 *Van De Belastingdienst* of September 7, 2006, and the case of March 11, 2004, C-9/02 *De Lasteyre Du Saillant*, it is evident that the court upholds measures that, while potentially discriminatory and encroaching upon the free provision of services, are deemed justifiable if they are proportionate and necessary to combat tax evasion.

of national sovereignty, it can sometimes offer valuable insights and similarities for harmonizing indirect taxation. The experience gained in managing direct taxes can be valuable in formulating policies and regulations for indirect taxation, allowing for greater simplicity in the activities of tax authorities. The approach taken by Italy, as demonstrated by recent agreements between platforms such as Airbnb and the Italian Revenue Agency, provides a model worthy of consideration for other jurisdictions.

5.3 Is Article Two in line with OECD regulations?

Before delving into potential changes and implementations of the proposal, it is logical to evaluate its consistency with OECD reports. Considering the elucidations provided in Chapter 4, without further repetitions, it is possible to notice that the characteristics of the European proposal are consistent with OECD requests. VAT is defined as a "*broad-based multiple staged, non-cumulative consumption tax of the destination type*".¹⁴³ It is precisely the destination principle that is sponsored and suggested by the OECD, and the European proposal also follows this principle as it is considered the most appropriate for VAT purposes.¹⁴⁴

According to the OECD International VAT/GST Guidelines, the jurisdiction where the customer is resident has the authority to levy VAT on remote supplies of services and intangibles, and this approach is also followed by the ViDA proposal.¹⁴⁵ Focusing mainly on the liability of platforms, a report presented to the fifth meeting of the Global Forum on VAT by the OECD articulated, for the first time, the role of digital platforms in the efficient and effective collection of VAT/GST. According to the report, the tax liability for VAT/GST is imposed solely on third parties (digital platforms) involved in the taxable supply, departing from the traditional principle of collecting taxes from all parties in the supply chain. This shift is driven by the fact that many jurisdictions have either already introduced or are considering legislation to impose VAT/GST liability on digital platforms.

The OECD report examined the full VAT/GST liability regime, describing it as one where "*the digital platform is fully and solely responsible for assessing, collecting, and remitting the VAT/GST due on the online sales it facilitates*".¹⁴⁶ Under this full VAT/GST liability regime, if a foreign supplier makes an online sale through a digital platform to a consumer in a taxing jurisdiction, the digital platform bears the sole responsibility for assessing, collecting, and remitting the VAT/GST. In reference to services, the OECD believes that relying on

¹⁴³ Cockfield et al., supra note 9, p. 208. For a concise explanation of the basic features of VAT, see Walter Hellerstein, "A Hitchhiker's Guide to the OECD's International VAT/GST Guidelines", Florida Tax Review, Vol. 18 (2016), pp. 593-596.

¹⁴⁴ OECD International VAT/GST Guidelines, p. 17 (para. 1.13) (explaining the implementation of the destination principle concerning international trade in goods). For a more detailed account of the destination principle at work, see Walter Hellerstein, "Jurisdiction to Tax Income and Consumption in the New Economy: A Theoretical and Comparative Perspective", Georgia Law Review, Vol. 38 (2003), pp. 14-29.

¹⁴⁵ OECD International VAT/GST Guidelines, p. 66-67 (paras. 3.113-115).

See also Action 1: 2015 Final Report, supra note 20, p. 126

¹⁴⁶ The Role of Digital Platforms in the Collection of VAT/GST on Online Sales 9264737057, 9789264737051 - DOKUMEN.PUB.
<https://dokumen.pub/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales-9264737057-9789264737051.html>

digital platforms to handle the collection and remittance of taxes owed on final transactions to end customers is anticipated to offer a streamlined solution for tax administrations. The experiences of jurisdictions already implementing this model seem to validate and reinforce this expectation. The supranational organization emphasizes that expanding the reach of this regime and encompass more service categories is theoretically feasible.¹⁴⁷

Overall, the ViDA proposal aligns with OECD recommendations concerning the taxation of digital platforms and the collection of VAT/GST. Adopting a full VAT/GST liability regime, as suggested by the OECD, could be an efficient solution. The indication given by the OECD that expanding the system to include more service categories is feasible aligns with the direction the European Commission aims to take in expanding the scope of taxation on digital platforms. However, considering the Commission's intention to extend the regulations to other sectors in the future, it is reasonable to question why a direct extension to multiple sectors of this reform was not chosen. It seems clear that for political reasons, it would be unrealistic to expect approval of a proposal involving all service sectors. The possibility of introducing a full VAT liability regime at EU level is equally unrealistic.

5.4 Navigating the Complexities of European VAT Reform for Digital Platforms.

5.4.1 Landscape and Ambiguities in the Context of the Proposal.

The decision to hold platforms accountable to such an extent appears entirely natural to the European legislator. It is evident that these reforms will lead to a significant increase in the obligations imposed on platforms. In this regard, there are still some points that could generate perplexity and doubts in the affected platforms and in the legislators of the member states. The European Proposal attempts to restore parity of treatment between short-term accommodation and passenger transport by road service providers. However, it is essential that, in order to ensure equal treatment, European principles such as legal certainty, proportionality, equality and neutrality – the cornerstone of VAT – are consistently upheld. The European Court of Justice underlines the centrality of the neutrality principle, which aims to entirely exempt the economic operator from VAT due or paid within all its activities.¹⁴⁸ In line with the rule of law, clear definitions and guidelines are needed to precisely delineate the obligations, responsibilities, and management of costs associated with the new role of platforms, which should not become overly burdensome and disproportionate.

The Commission argues that modernizing the VAT system in this way will contribute to an improvement in terms of control, thereby enhancing VAT collection. Despite promising significant revenue increases, representatives of the member states remain sceptical, leading to the two and a half years of postponement of

¹⁴⁷ Although the OECD uses generic terms, it is in favour of expanding a regime of full liability for platforms even in the realm of services.

¹⁴⁸ *Odvolačí finanční ředitelství v Pavlína Bašťová* case, (C-432/15).

the proposal's approval.¹⁴⁹ Harmonizing and maintaining regulation in line with the times is certainly no easy task, considering the continuous evolution of virtual realities.

Maintaining a degree of coherence in the succession of regulations is certainly a complex task. According to Article 12 of the VAT Directive, Member States have the discretionary power to decide whether to tax occasional transactions by non-taxable persons. However, the legislation under discussion in this thesis seems to ignore this discretion, establishing instead a uniform treatment for occasional activities and holding digital platforms responsible for VAT even for services provided by non-taxable persons, regardless of their occasional nature.¹⁵⁰ This aspect is particularly significant considering that many private individuals may provide services through these platforms, earning meager incomes solely to supplement their income from other sources.

Overall, while commendable in its intent to modernize VAT regulations to adapt to the digital economy, the proposed reform still faces several critical unresolved issues.

5.4.2. Intricate Complexity of Definitions in Article Two.

The European proposal does not include an explicit and binding definition of "platform" but merely mentions it through soft law instruments in the report preceding the proposal itself.¹⁵¹ Although this definition is very broad, it fails to truly consider and encompass all transactions occurring on the platforms covered by the proposal, as it only refers to services offered where the consideration is monetary, thus excluding transactions such as the reciprocal exchange of accommodations that occur on the same platforms.¹⁵² Consequently, the treatment for VAT purposes in cases where the consideration is non-monetary is not explicitly specified, making the taxable base for VAT and the treatment of these transactions unclear, as payment is not made in cash. The platform does not have funds in advance to pay the VAT. The absence of definitions stems from the desire not to constrain a growing and ever-changing phenomenon like the digital economy. However, this risks undermining essential certainty in tax relationships, confusing in understanding transactions affected by the deemed supplier provision.

The same ambiguities arise from the formulation of the directive, in which it is stated that Article 28 a applies to platforms offering either "*short-term accommodation rental services, namely the uninterrupted rental of accommodation to the same person for a maximum of 30 nights, or of passenger transport services by road*".¹⁵³ This formulation raises doubts and uncertainties because, given the alternation of services mentioned in the

¹⁴⁹ Two reports from the ECON Committee (Committee on Economic and Monetary Affairs, part of the European Parliament (EP)) have been published, each containing 251 suggested amendments to the ViDA proposal. This alert provides an overview of the most notable amendments.

¹⁵⁰ As previously highlighted when illustrating Airbnb regulations across European states, it is evident that there is a variance in treatments among the different states.

¹⁵¹ Please refer to footnotes 13(7) and 24 of the report preceding the Council proposal directive amending Directive 2006/112/EC.

¹⁵² As highlighted by G. Beretta, "VAT in the digital age. Updated VAT rules for the platform economy", in H&I n.23/2023.

¹⁵³ It is important to note that these services will be considered taxable events for VAT purposes only when provided through a platform. Therefore, irrespective of whether they constitute occasional activities, the same service provided by a similar entity without a platform will not be deemed subject to VAT.

article, it becomes complex to manage situations in which the same platform simultaneously provides packages that include a combination of the two services (for example, a service that offers both short-term accommodation and transport, rather than offering only one service alternatively). Such ambiguities have not been resolved by case law, as the European Court has so far only emphasized in the *Star Coaches Case*¹⁵⁴ that a transport service cannot be considered a journey per se.

Furthermore, ambiguities arise when a digital platform known for short-term accommodation offers a service that, considering the variety of ancillary services provided together with short-term accommodation, effectively provides services very similar to those offered by travel agencies to which the TOMS regime applies.¹⁵⁵ In this regard, the European Court of Justice in the *Alpenchalets Resorts Case*¹⁵⁶ indicated that Articles 306 to 310 of Council Directive 2006/112/EC must be interpreted to the effect that the mere letting, by a travel agency, of holiday accommodation rented by other taxable persons, or a similar letting of holiday residences, combined with the provision of additional ancillary services, regardless of the importance of these ancillary services, constitutes a single supply falling within the special scheme for travel agencies. In the proposal, the Commission highlights the exemptions and the TOMS provided for agencies do not apply to suppliers covered by Article 28 of the VAT Directive in order to avoid abuses.¹⁵⁷ However, to avoid such abuses, greater clarity and certainty in the definitions, or appropriate clarifications by the administrations, are necessary. Among the list of definitions lacking in the proposal, although they should be flexible, are also the definitions of "short-term rental accommodation" and "passenger transport services by road". The term short-term rental accommodation refers to "*uninterrupted short rental accommodation*" and sets a 30-day threshold. However, it seems that EU Member States will still have the discretion to adopt a longer period of 31 days or more to distinguish between exempt and taxable lettings, to provide additional safeguards or to increase revenues.¹⁵⁸ Conversely, national legislation using a shorter period than 30 days will no longer be allowed. About short-term accommodation, it is possible to distinguish between B&Bs, hotel accommodations with additional services, rental of residences, shared houses and home exchanges, and it seems that all these activities are encompassed in the proposal.

The reference to "passenger transport services by road" in Article 28, as mentioned in Article 48 of Directive 2006/112/EC, appears to encompass only on-demand and ride-sharing transport services, excluding car-sharing services that offer rental only, even if managed by the same platforms. Such definitions and categories must be established in legally binding regulations rather than through explanatory notes or guidelines from the VAT committee so that platforms are aware of situations in which they are responsible for VAT payment on

¹⁵⁴ *Star Coaches s. r. o. versus Finanční ředitelství pro hlavní město Prahu*, C-220/11, 2012.

¹⁵⁵ The operations within the scope of the special scheme for travel agents (TOMS) are currently subject to a separate review for modernization.

¹⁵⁶ *Alpenchalets Resorts GmbH versus Finanzamt München Abteilung Körperschaften*, Case C-552/17, 2018.

¹⁵⁷ According to the general part of the Explanatory Memorandum this provision can prevent abuse.

¹⁵⁸ See *Empire Stores Ltd v Commissioners of Customs and Excise* Case C-33/93, 1994 and *A Oy Case*, C-33/16, 2017.

others' transactions. Another area that raises concerns and requires clarity is ensuring high levels of protection and transparency for platforms involved in the new obligations.

In conclusion, while restoring a level playing field among sectors is commendable, the proposal introduces complexity that could disproportionately burden platforms. Firstly, the lack of clear definitions raises concerns about the potential for excessive burdens, undermining legal certainty, which is fundamental for the proper functioning of the system. Therefore, when defining and categorizing sectors, it is crucial to establish common and harmonized rules instead of granting autonomy to individual member states. Legally binding regulations with clear definitions are necessary to ensure transparency and fairness in tax treatment, particularly given the fragmentation and significant differences in the current legislation of various member states.

5.4.3 Are There Clear and Sufficient Safe Harbours for Digital Platforms in Article Two?

A provision for platforms to mitigate their liability is outlined in Article Two, which is provided for platforms that, based on information provided by the actual supplier, reasonably decide not to act as deemed suppliers. It states that platforms must collect VAT unless the supplier provides the platform operator with a valid VAT identification number and explicitly declares their intention to handle VAT independently. Simply providing the seller's VAT number is insufficient to exempt the platform from the deemed seller regulations. Therefore, platforms need confirmation that the seller will apply VAT to avoid liability for tax collection.

These conditions include reliance on information transmitted by the service provider to declare and pay the corresponding amount. If such information turns out to be false, the deemed supplier should be given the opportunity to prove that they were not aware of its falsity.

According to the proposal, member states may require additional responsibilities from platforms to verify the VAT identification numbers provided by the sellers. However, the definition of these conditions seems extremely broad, without clarifying the limits of the deemed supplier's liability and without specifying how the latter should prove their innocence. It would be helpful to have a clear list of checks that the platform must perform to demonstrate its due diligence and, therefore, a defined list of obligations and checks necessary on the status of the actual supplier for tax purposes to objectively determine the deemed supplier's liability, especially in view of the new European reform.¹⁵⁹

It would be necessary to clarify whether platforms, or those acting on their behalf, should carry out additional checks to avoid situations in which the actual supplier, when despite benefiting from a special regime for small

¹⁵⁹ Furthermore, when the underlying supplier holds a VAT identification number but is not obliged to collect VAT (for instance, because they benefit from the special regime for small businesses in a Member State that provides a VAT identification number for such entities), such supplier should not provide the VAT identification number to the platform. The Proposal does not impose any sanctions in case the VAT identification number is not provided. However, it is likely that national authorities may introduce sanctions in the future.

businesses, communicates their VAT number to the platform.¹⁶⁰ It is precisely in these specific circumstances that no solutions are provided, and the risk of double non-taxation could undermine efforts to reduce the VAT gap.¹⁶¹

Furthermore, it should be further clarified that services provided to final consumers are considered supplied to the member state only when the underlying transaction is taxable, i.e., At the moment of payment, the platform becomes liable, as it is only at that point that it possesses the sum to be remitted for tax purposes.

5.4.4. Balancing Responsibilities: Safeguarding and Addressing New Burdens for Digital Platforms.

The burdens on those acting as actual suppliers should be equally clear and unequivocally established. In 2020, during clarifications on VAT rules for e-commerce, the Commission stated that the same electronic interface should insist on holding the actual supplier accountable and aware of the importance of providing all relevant information. However, this approach represents an additional burden on the platforms responsible for exerting pressure on the actual suppliers.¹⁶² This situation could generate a negative opinion of actual suppliers towards the platforms, as they would feel compelled to fulfil obligations not clearly defined by law. This could undermine platforms' operations, as excessive pressure on suppliers could lead to their loss, a problem that could be avoided if a clear list of obligations defined by law were present.

All the burdens platforms will have to bear must be considered. They will have to invest in tracking, authorization, and storage to support and manage a new regime. Indeed, in favour of facilitating tax collection by tax authorities, they could risk being disproportionately burdened and with excessive costs. It would be necessary to estimate the costs borne by the platforms concerned following the potential burdens with subsequent access to additional funds to be used for administrative and management burdens that the payment of VAT on behalf of the actual supplier may entail. Referencing the European Court of Justice C-678/11 judgment of December 11, 2014, the judges emphasised that exigencies related to combating tax evasion and ensuring effective VAT collection may be invoked to justify a restriction on the four fundamental European freedoms. Therefore, to avoid undue criticism towards the latest European proposal, it can be noted that the court had already expressed itself years ago, justifying an increase in the responsibilities of platforms and the control directed towards them, justified by imperative reasons of general interest as the ultimate goal is to remedy tax evasion. However, it must always be remembered that while combating evasion justifies such

¹⁶⁰ The proposal does not impose any penalty if a supplier provides a VAT identification number, and the situation outlined above is likely to be clarified in forthcoming guidelines or by each Member State.

¹⁶¹ As observed by N. Cicin- Sain, Newly proposed VAT rules for sharing economy platforms- some fine tuning needed ?

¹⁶² The proposal also extends the rules requiring platforms to collect information and provide it to EU Member States upon request. The platform may use a standard form pursuant to Article 47 of Regulation 904/2010. Since Article 54c of the VAT Implementing Regulation is not amended in the proposed amendment to Regulation 282/2011, the information to be collected and retained consists of: the name, postal address, and electronic address or website of the supplier whose services are facilitated through the use of the electronic interface, and, if available, the VAT identification number or national tax number of the supplier, the bank account number or virtual account number of the supplier, and a description of the services, their value, information to establish the place of supply and time of supply, and, if available, the order number or unique transaction number. See EUR-Lex - 02011R0282-20210701 - EN - EUR-Lex. https://eur-lex.europa.eu/eli/reg_impl/2011/282/2021-07-01. See EUR-Lex - 02011R0282-20210701 - EN - EUR-Lex. https://eur-lex.europa.eu/eli/reg_impl/2011/282/2021-07-01

measures, the proportional principle must be respected. Adherence to this principle should not be taken for granted, as it is argued that it is hardly conceivable to deem a measure proportional solely because the costs to the platform are reduced. In a similar context, Advocate General Bobek, in the SS SIA case (C-175/20), expressed doubts about the possibility of allowing public authorities to effectively outsource part of the activities of public administration, thereby forcing private enterprises to bear the costs for what essentially amounts to a public function.

If the ultimate goal is to create parity of treatment, one must avoid creating excessive burdens, imbalance and disproportionality to the detriment of digital platforms. In this case, guarantees in favour of the platform must be sought, and in order to mitigate these costs, to avoid that such platforms try to transfer them to suppliers or customers who use their services with consequent risks to their economic sustainability. In addition, while large platforms in the sector, characterised by a solid organizational structure, extensive experience, and significant business volumes, may still be able to manage the increase in responsibilities and costs, the same cannot be said for new emerging digital platforms in the same sector. For these potential startups, the escalation of regulatory obligations and the presence of various criteria and associated constraints could pose an insurmountable barrier. This barrier could impede their establishment, hinder competition within the digital realm, and ultimately bolster the dominance of established platforms. Consequently, the sector might evolve into an oligopoly, characterised by a handful of dominant platforms, at the expense of diversity and innovation in the digital marketplace.

To summarise, these criticisms need to be addressed by introducing explicit and binding guidelines defining the responsibilities and obligations of digital platforms, as well as the necessary checks to demonstrate compliance with tax regulations. The principle of proportionality must be respected to avoid excessively burdening platforms and ensure a level playing field for all stakeholders.

5.4.5 Absence of Deductibility Provision and its Ramifications.

It is not surprising that, after the successful implementation of regulations for online services in 2015 and supplies of goods to final consumers in 2021, the European Commission is proposing the adoption of further similar regulations for certain services offered by digital platforms. It is noteworthy and innovative that this proposal if approved, would apply VAT to transactions without the possibility of deducting VAT on expenses incurred. The absence of the right to deduct VAT would likely lead to a significant increase in prices for services offered by digital providers. If the goal is to create fairness of treatment, the modification provided for by Article 136 seems particularly peculiar, which modifies the VAT treatment by specifically providing for an exemption without the right to deduction. This provision is included to avoid abuses as the deduction of VAT may often concern costs of a private nature, making it difficult to determine and verify if the costs were actually incurred for the services provided.

The proposed regime has the effect of treating the provision of short-term accommodation and passenger transport services less favourably when the deemed supplier provision is applied. However, this approach is supported by the *Avon Cosmetics Case*¹⁶³ concerning a company that sells its products in the UK through independent sellers. These independent sellers are traders for VAT purposes but are not registered as such due to the registration threshold applicable in the UK. Therefore, they do not charge VAT on the consideration charged to the customer for the products. Avon Cosmetics charges VAT to the independent sellers. In this scenario, the difference between the price charged by Avon Cosmetics and the retail price charged by individual sellers is not subject to VAT. In order to address this issue, the UK has provided that economic operators such as Avon Cosmetics must pay VAT on the retail price charged by the sellers and not on the actual price charged. Avon contests this approach, calling it a violation of fiscal neutrality, equal treatment, and proportionality. The response of the European Court of Justice has established that the regime is suitable to prevent tax evasion in line with current Article 168 of the VAT directive, and to remedy specific problems caused by direct selling systems. Furthermore, it concludes by emphasizing that these additional expenses are simply the consequence of Avon Cosmetics' business model choice of selling products in this way. It is, therefore, intuitive that the same reasoning is used to justify the additional expenses that the parties concerned by the deemed supplier provision will have to bear, as it is the platform that consciously chooses to work with one or more of the categories of service providers to which this fiction applies and therefore must accept the consequences of the application of the new platform legislation.

5.4.6 The Importance of SMEs in the EU: Balancing Flexibility and Compliance in ViDA Proposal.

As European institutions often like to repeat, SMEs are the backbone of the European economy, representing 99% of all EU businesses.¹⁶⁴ It is also emphasized that such enterprises are a central element of the EU's dual ambition to create a sustainable and digital economy. The broad category includes all enterprises with up to 250 employees whose annual turnover does not exceed EUR 50 million or whose total annual balance sheet does not exceed EUR 43 million. This simple definition immediately makes it easy to realize the breadth of the category. Therefore, given the likely future coexistence of the VIDA directive and the probable SME VAT directive, it is important to ensure flexibility and freedom of choice to promote the growth and development of these enterprises. To ensure flexibility, one could consider the possibility of choice for these taxable persons to decide whether to register for VAT purposes in individual states and submit their declarations or whether, after weighing the costs associated with non-deductible upstream VAT compared to the administrative burden of declaring the VAT related to the services provided to them, it is instead convenient to opt for the renunciation of deductibility and the deemed supplier regime of the VIDA proposal.

¹⁶³ *Avon Cosmetics Ltd versus The Commissioners for Her Majesty's Revenue and Customs*, C-305/16, 2017.

¹⁶⁴ See [SMEs - European Commission \(europa.eu\)](https://ec.europa.eu/economy_finance/sme_strategy_en.pdf) and 'Unleashing the full potential of European SMEs' factsheet by the European commission, [EU SMEs strategy_en.pdf \(1\).pdf](https://ec.europa.eu/economy_finance/sme_strategy_en.pdf).

5.5 Current State of VAT Regulation for Digital Platforms in Member States: Advocating for Harmonization.

The European Court of Justice, in its jurisprudential development, has highlighted key concepts such as the direct applicability of sufficiently precise, clear, and unconditional Community provisions, as well as the primacy of EU law over national law, as expressed in the emblematic *VAN Gend & Loos Case*.¹⁶⁵ Within the realm of indirect taxation, Member States retain fiscal sovereignty in choosing their VAT structure. Based on Article 113 of the TFEU, VAT should be harmonised to the extent necessary to ensure the creation and functioning of the internal market and to avoid distortions of competition. In this context, it is important to consider that the principle of neutrality is crucial for any tax instrument, but especially for VAT, whose purpose is not to burden businesses – which act as unpaid tax collectors – and to hinder economic activity as little as possible. A more harmonized VAT system could reduce compliance costs, thereby increasing efficiency in revenue collection for national treasuries.

Several Member States have already developed their VAT regulations for digital platforms. To ensure consistency of treatment between the traditional and digital sectors, it is important to ensure uniformity in the identification of actual suppliers for VAT purposes under the new reform, thus avoiding a situation where a non-taxable person is affected by the deemed supplier provision while a similar entity in another Member State is not. This risk may occur today as different thresholds are in place among Member States, particularly regarding passenger transport platforms, to identify whether a supplier is subject to VAT. Many states are aware that it is common for services to be provided on these platforms occasionally, perhaps to supplement individual income. These supplies are not a primary source of income. As a result, income thresholds are set to identify such suppliers and apply appropriate tax treatment, especially concerning passenger transport services by road. While a common threshold at the European level is not introduced, greater clarity on the European position regarding such income thresholds for tax purposes would still be desirable.

Careful consideration must be given to the fact that exemptions granted by some Member States, which the reform will repeal, are often aimed at avoiding burdensome double taxation, a problem that can arise when the same transaction is taxed multiple times.¹⁶⁶ However, the abolition of such exemptions at the European level could require significant changes to the domestic regulations of Member States, resulting in additional complexity.¹⁶⁷ Consequently, greater clarity at the European level would help manage this impending issue.

The digital economy is constantly evolving, and tax measures must be designed to be more harmonious in categorizing activities and providers, enabling them to flexibly adapt to these new forms of commerce. At the

¹⁶⁵ N.V. Algemene Transport— en Expeditie Onderneming van Gend & Loos versus Nederlandse administratie der belastingen (Netherlands Inland Revenue Administration), C-26/62, 1962.

¹⁶⁶ According to Confedilizia – the Italian Confederation of Property Owners – an association formed in 1945, if the proposed Directive were to be approved, it would introduce discrimination against homeowners. They argue that in Italy, there is a risk of implementing a 22% VAT rate, whereas traditional structures, such as hotels, benefit from a reduced rate of 10%.

¹⁶⁷ It is crucial to recognize that states should be afforded extended periods to implement the reform, as numerous jurisdictions will necessitate amendments to their domestic legislation.

European level, to ensure that the ViDA project remains hypothetically adaptable to other digital platforms in the future, it is crucial that it be regularly reviewed and updated. This may involve conducting periodic assessments and analyses to identify potential areas for improvement and make necessary adjustments to tax regulations. It is important to maintain a constant view of which sectors may be affected by similar reforms.

With this fragmented context and the diversity of legislation among member states, it may be worthwhile to consider one of two directions. Firstly, efforts could be directed towards establishing clear EU definitions in the commission proposal, ensuring legal certainty and uniform approaches. This would involve categorizing various characteristics, income thresholds, and services uniformly among member states and establishing common standards and categories at the European level through an agreement among member states. Alternatively, the EU could accept the diversity in visions and legislations among member states and establish different classifications and criteria in various member states to identify the sectors of interest.¹⁶⁸ However, adopting this approach with the awareness that it would create a "level playing field" that varies from one nation to another, without achieving uniformity at the European level and without considering the complexities for platform operators who would face different obligations in each state.

5.6 Towards Fair and Flexible VAT Regulations for Digital Platforms: Insights from the International Landscape.

Employing detailed indicators to determine whether to include platforms in a specific role offers the advantage of enhancing certainty for digital platforms and tax authorities. For example, by equating food delivery service platforms with passenger transport and short-term rental accommodation platforms, New Zealand aims to be inclusive in its approach. Conversely, in India, similar regulations concerning digital platforms aim to be as inclusive and harmonious as possible.

In Japan, recent reforms mandate the creation of periodic lists based on indicators of platforms and sectors affected by the recent VAT reform in the digital sector. However, given the rapid evolution of business models in the digital economy, maintaining such detailed indicators may be a challenge for tax authorities. This could lead to unequal treatment because some digital platforms, through the implementation of new technologies not yet reflected in these indicators, could remain not liable for VAT purposes while they are, in fact, in a similar position to platforms falling within the scope and having the capability to do so.

Similar considerations arise if a jurisdiction decides to publish a list of names of digital platforms falling into a specific role. Such an approach could distort competition/arbitrary decisions based on the tax authorities' market knowledge.

¹⁶⁸ See Article 135 (2) of the Proposal.

It may be advisable to introduce a degree of flexibility in the design and implementation of indicators to include digital platforms in a specific role, perhaps opting for periodic opinions from various sectors that may feel the need to restore greater fairness of treatment between the traditional and digital sectors. In addition to neutrality considerations, which require digital platforms in similar situations to be treated equally, a flexible approach allows the tax authority to pay sufficient attention to proportionality.

When considering assigning such a role to platforms, the potential interaction of other rules applicable to digital platforms with the requirements imposed in this context should also be taken into account, always avoiding situations of double taxation or double non-taxation.

Notable distinctions arise when focusing on the international landscape. For instance, in the EU, digital platforms are responsible for VAT regardless of the location of the third-party supplier. In contrast, New Zealand rules apply only to inbound transactions, requiring platform operators to differentiate between domestic and inbound supplies.

In contrast to EU, many countries provide a positive, albeit broad and flexible, definition of digital platforms,¹⁶⁹ thus facilitating a better understanding of the scope of application. For example, in Canada, legislation specifically targets short-term rental accommodation platforms, distinguished by its comprehensiveness and detail, particularly in the provision of effective safe harbours. To enhance comprehension of reform scope within EU legislation, integrating legislative guidance and clarification mechanisms akin to those established by Canadian authorities could be beneficial.¹⁷⁰

As previously analysed, considering that the ViDA proposal does not grant a right to deduction, it is likely that the prices of services provided by underlying suppliers will be substantially higher than those of entrepreneurs in the traditional economy, resulting in an accumulation of tax. In this regard, in a similar situation in Canada, the government opts to provide VAT exemption to the facilitation service offered to underlying suppliers by the platform, along with the right to deduct VAT on inputs when services rendered by the underlying supplier are subject to the presumption provision.¹⁷¹ Thus, the Canadian government seeks to prevent non-deductible VAT on the facilitation service. The Commission may consider adopting a similar solution.

The approach adopted by the European Union and Canada focuses on a limited number of sectors.¹⁷² Legislators must be aware and attentive not to focus solely on well-known large digital platform operators but

¹⁶⁹ In Europe only "platform economy" is mentioned four times but not defined in the preamble of the proposed amendment to the VAT Directive (at points 2, 21, and 22). A definition of "platform economy" is only found in footnote 24 of the explanatory memorandum of the proposed amendment to the VAT Directive (page 5).

¹⁷⁰ See [Cross-border digital products or services: GST/HST for digital economy businesses - Canada.ca](#).

¹⁷¹ This is the case under the Canadian collection model for GST/HST on short-term accommodation.

¹⁷² Other areas that may be included in the future could include professional and manual services, "31 work," crowdfunding, and peer-to-peer loans. However, VAT and the challenges with small entrepreneurs operating in these sectors dictate that this occurs at a later stage. See [VIDA - il più grande pacchetto di riforma dell'IVA degli ultimi decenni - Taxmen VAT](#)

to consider that within the same sector, there are or may arise a diversity of business models and sizes of digital platforms whose birth and growth should be protected and not hindered by excessive regulatory burdens. Imposing broad requirements would further increase costs for users (sellers and customers) as someone will have to finance these operators' growing compliance costs to act as outposts caught by tax authorities. Imposing reasonable thresholds on digital platforms to impose VAT collection obligations is an opportunity that should not to be ignored.

Specifically, the EU could draw inspiration from Canada, where, despite not establishing a full VAT liability regime, the legislation is notably clear. It offers detailed definitions and decisional trees provided by public authorities to ensure understanding for digital platforms. Integrating legislative guidance and clarification mechanisms akin to those established by Canadian authorities could enhance comprehension within EU legislation.

To improve the efficiency of VAT regulations for digital platforms, the EU could derive insights from successful practices implemented in other countries. Overall, incorporating elements from various legislative frameworks could enhance the efficiency of the European proposal. Specifically, the EU could draw inspiration from Canada, where, despite not establishing a full VAT liability regime, the legislation is notably clear, offering detailed definitions and decisional trees provided by public authorities to prevent complicating understanding for digital platforms. Integrating legislative guidance and clarification mechanisms akin to those established by Canadian authorities could enhance comprehension within EU legislation.

Furthermore, Canada's and other States' approach to preventing non-deductible VAT on facilitation services provided to suppliers by platforms showcases a proactive stance toward addressing VAT accumulation, a strategy that the European Union should consider adopting.

Conversely, features such as those adopted in Saudi Arabia for distinguishing the treatment for resident and non-resident providers should not be replicated in European legislation as they risk enabling inequitable treatment.

Moreover, given the European Commission's intent to broaden the scope of Article Two in the future to encompass more sectors, a more inclusive approach, acknowledging the rapid growth of digital platforms across various sectors, similar to that embraced in India, could prove more efficient. This might entail taxing all on-spot services, i.e., those not delivered remotely, as they share similar characteristics and can be offered by similar platforms acting as intermediaries.

In summary, adopting successful practices from other countries, particularly regarding inclusivity, clarity, and addressing VAT accumulation, could empower the EU to enhance the efficiency and effectiveness of its VAT regulations for platforms.

5.7 Critical Examination of Estonia's Position on Article Two.

The position taken by Estonia on May 14 is based on three main concerns raised by the Estonian Minister of Finance:

- Estonia argues that the new rules proposed under the deemed supplier regime deviate from the general VAT principle, which allows suppliers to deduct VAT if the service provided is subject to VAT. According to the deemed supplier regime, platforms would apply VAT on services offered by non-taxable persons who cannot deduct VAT.
- Estonia contends that implementing Article Two of the ViDA Proposal will incur in additional costs for SMEs and consumers.
- The proposed system would introduce an additional imbalance in competition between service providers using a platform and those operating independently.¹⁷³

To protect consumers and SMEs, Estonia suggests an opt-in regime where each Member State, on a voluntary basis, should decide whether to implement the "deemed supplier provision" based on their perception of market distortions.

However, Estonia needs to consider that the diversity of VAT rules among Member States already represents a significant burden for businesses. Harmonization of VAT rules is essential to avoid further complications. The reasons raised by Estonia are unconvincing as they overlook entirely the objective of harmonizing European regulations. Such harmonization is crucial to avoid divergent treatment and competitive conditions among Member States and to prevent additional administrative burdens on platforms.

The option of an opt-in regime, suggested by Estonia, would generate diversity in treatment and a distortion of competition among Member States. The goal should be to create a "level playing field" at the European level by harmonizing regulations and ensuring uniform competitive conditions across all Member States. To this end, adopting a mandatory "platform fiction" applied under the same conditions in all Member States is necessary. The European proposal already represents a compromise, and although it may not be perfectly efficient, it is a step in the right direction.¹⁷⁴

The Belgian presidency did not address the criticism raised by Estonia regarding the need to protect the principle of VAT neutrality and concerns related to the generation of hidden VAT on May 14 during the ECOFIN meeting. The non-admission of input VAT deduction can primarily be justified on practical grounds. The administrative burden of handling numerous input VAT deduction requests from SMEs is significant and could potentially offset the revenues from taxation on the output side. This is one of the reasons why SMEs are exempt under the special scheme of the VAT Directive. However, practical considerations should not

¹⁷³ See [EU Member States fail to reach agreement on the VAT in the Digital Age \(ViDA\) Proposal | Tax Alerts | Deloitte Belgium](#)

¹⁷⁴ See [EU: New draft of EU VAT reform \(VAT in the Digital Age - KPMG United States\)](#)

outweigh the principle of neutrality. Imposing VAT on services provided by individuals currently outside the scope of VAT or exempt from VAT effectively means treating these individuals as taxable persons. The right to deduct input VAT should naturally follow. How it should be ensured remains to be determined.

Several alternative approaches to the complete denial of the right to deduct have been proposed in the legal debate. These include zero-rating the supply by the underlying supplier, applying a reduced rate on the output transaction, or providing flat-rate input tax compensation. However, increasing the responsibilities of platforms and undermining harmonization by opting for the voluntary application of the "deemed supplier provision" is not a viable solution.

Examining the international landscape, New Zealand has pioneered a unique approach to VAT deductibility within the deemed supplier provision. Similarly to the ViDA Proposal, starting from April 1, 2024, digital platforms in New Zealand are mandated to collect GST on passenger transport services, short-term rental accommodations and food delivery services. New Zealand offers a flat-rate credit to service providers, refunding them a portion of the collected GST. Unlike the EU's proposed rules, the New Zealand flat-rate regime ensures a refund of 8.5% of the GST collected to the service provider. Consequently, only 6.5% of the 15% GST charged on platforms is remitted to Inland Revenue if the underlying supplier is not registered for GST. This alternative framework may provide valuable insights for the EU to consider in its implementation strategy and ensure compliance with the Neutrality Principle.

Given the current situation, we must now await the efforts of the Belgian Presidency of the EU Council to reach an agreement with Estonia by the next ECOFIN meeting, which is scheduled for June 21, 2024.

5.8 Toward Stakeholder Perspective on Article Two.

Overall, it has been observed that the reforms adopted by legislators of various states exhibit similarities and resemblances among them. The prevailing opinion, or the most widespread sentiment, is the necessity for clarity at the legislative level. Some digital platform operators also feel this need.¹⁷⁵ This is because the current regulation of the VAT system in the digital world is highly fragmented and complex, thus risking distortion of competition. Therefore, there is a palpable need to apply more standardized rules uniformly among Member States to increase revenue collection and promote harmonization.

¹⁷⁵ Starting from 2021, Airbnb has been advocating for a clear, simple, and harmonized regulatory framework in Europe to unlock the benefits of hospitality for millions of European families and provide governments with the information they need to crack down on speculators and overtourism. [Airbnb accoglie con favore le proposte di regolamento dell'UE](#)

It is important to underline that the platforms involved in the proposal introduced by the European Commission in December 2022 share different sizes and revenue. Italian Way¹⁷⁶ (a recent established Italian platform) provides a concrete example of the challenges smaller platforms must face, a recently established platform. The president of Aigab¹⁷⁷ and CEO Marco Celani highlights that Italian Way will undergo a significant impact from the reform, with a high direct tax burden on short-term rentals as individuals would become subject to both flat-rate tax and VAT, resulting in a total direct tax burden of 31%¹⁷⁸. This could render the use of such services uneconomical, driving activities towards loopholes and offline solutions.¹⁷⁹

Countries like Italy have already attempted to address the tax situation of such platforms independently, but the fragmented and complex legislation makes it difficult for operators to understand how to navigate and ensure compliance with current regulations.¹⁸⁰ Generally, the Commission's initiative to update the current VAT rules has been welcomed because, beyond specific comments on the proposal, there is a general belief that regulation is necessary. However, it is also considered crucial to conduct a thorough analysis of the effectiveness of proposed reforms to avoid introducing excessive complexity that effectively results in non-compliance or excessive burdens for small businesses.

Many representative associations from various sectors affected have expressed their views following the European proposal. BusinessEurope¹⁸¹ welcomes the initiative of the European Commission to update the current VAT rules and supports efforts to combat and reduce the VAT gap in the EU. However, it emphasizes the importance of conducting a thorough analysis of the efficiency of the proposed reforms to avoid the

¹⁷⁶ Italianway is an digital platform dedicated to renting apartments, starting from one night up to 12 months, providing essential hospitality services. [Italianway | Book your accommodation in Italy](#)

¹⁷⁷ AIGAB (Association of Italian Short-Term Accommodation Managers) provides institutional representation to property managers who professionally manage houses.

¹⁷⁸ If the approval of the Directive under consideration were to materialize, there is a risk of introducing a VAT rate of 22%, while traditional structures, such as hotels for example, are subject to a reduced rate (10%).

¹⁷⁹ AIGAB is a member of the European Holiday Home Association (EHHA) and has been working with the European Commission for over a year to harmonize regulations within the sector. In this regard, the President has expressed concerns in interviews conducted with major journalistic outlets and in his recent statements. The President's remarks emphasize the need for concerted efforts to streamline and standardize regulations, thereby promoting greater clarity, consistency, and efficiency in the operation of holiday home businesses within the European Union. [Celani \(Aigab\): "Insostenibile l'aumento di tassazione al 26% per gli affitti brevi" \(veritacaffari.it\)](#).

¹⁸⁰ In Italy, the extant regulatory framework governing short-term rental accommodations encompasses several forthcoming obligations, notably the imminent introduction of the National Identification Code (CIN). This initiative carries the potential risk of intersecting with extant regional identification codes (CIRs). Additionally, to secure the National Identification Code (CIN) and avert penalties, providers of short-term rental accommodations are mandated to equip their premises with gas and carbon monoxide detectors, as well as portable fire extinguishers. Furthermore, a flat tax rate of 26% has been stipulated for secondary residences rented through online platforms.

Presently, within the nation's confines, extant measures regulate various aspects of short-term rentals. These include adherence to the Civil Code governing short-term lease agreements, as well as adherence to regional statutes dictating the classification of tourist accommodations or vacation residences. Such regulations necessitate the registration of Regional Identification Codes, which exhibit variability across different regions. Furthermore, compliance with urban planning regulations concerning habitation standards and safety protocols, necessitating municipal approval, is obligatory. Providers are also obligated to transmit guest data to Public Security authorities within 24 hours of arrival, collect and remit tourist taxes, satisfy the RAI television license fee, furnish statistical data to ISTAT employing systems like Ross1000, and procure a VAT number for short-term rental enterprises encompassing more than four properties.

¹⁸¹ BusinessEurope is one of the foremost proponents of growth and competitiveness on the European stage, championing the interests of companies throughout the continent and actively advocating on the issues that have the greatest impact on their success. The European entrepreneurs' association represents companies of all sizes in 36 European countries, including their national federations among its direct members. [BusinessEurope](#)

introduction of unnecessary complexity that may foster non-compliance, especially for small businesses that may require support in dealing with any additional burdens.¹⁸²

Furthermore, BusinessEurope's broad representation has gathered the opinions of key platforms involved and emphasized the need for a more realistic timeline. Therefore, it also suggests further extending the time period to allow for a smoother transition. Similarly, ETAF underscores the need for an adequate preparation timeline and support from national authorities to enable an effective transition, especially for SMEs, and the possibility of considering a phased approach to extend reform measures to other sectors after an impact assessment.¹⁸³

ETAF¹⁸⁴ has also emphasized the risk of compromising the principle of VAT neutrality, as the services of underlying suppliers would be subject to VAT without the suppliers being able to deduct VAT on the costs related to such services. Finally, it has highlighted the importance of a clear definition of intermediaries in the context of the platform economy, to provide legal and tax certainty.

As previously analysed, the Commission has proposed this reform to promote a fairer playing field between the traditional sector and the digital platform industry. However, this new proposal may fail to ensure complete fairness due to its structure, potentially risking the creation of disparities. According to this proposal, a platform becomes a deemed supplier only when the underlying supplier does not charge VAT. Consequently, platforms are not accountable for all service providers and must continuously conduct checks to determine whether they are liable for specific providers.¹⁸⁵

Especially in the passenger transport sector, there could be disparities in the treatment between those who benefit from the small business regime and use platforms (for these supplies, VAT will be charged by the platform). Traditional taxi drivers who operate in the traditional sector and, being small entrepreneurs, do not have to apply VAT to their services. This creates an advantage for traditional taxi drivers under the SME regime who can continue to offer services at lower prices as they are not subject to VAT compared to drivers working through platforms which are subject to VAT regardless of their turnover.

The current lack of harmonization of SME regime rules across various Member States means that traditional taxi drivers may or may not be subject to the small business regime, depending on their turnover. Furthermore,

¹⁸² VAT in the Digital Age: BusinessEurope's reply to the European Commission's Public Consultation, 2023, [2023-04-03_busesseuropes_reply_to_the_public_consultation_on_vida.pdf](#)

¹⁸³ ETAF, Position paper on the VAT in the digital age package (ViDA), 2023, [ETAF-feedback-on-ViDA.pdf](#)

¹⁸⁴ The European Tax Adviser Federation (ETAF) serves as a pan-European entity uniting 215,000 tax professionals hailing from France, Germany, Belgium, Romania, Hungary, Austria, and Croatia. Established in December 2015, ETAF operates as an international non-profit organization (AISBL), governed by Belgian law and headquartered in Brussels. The primary objective and mission entail advocating for the regulated tax profession at the European level by closely collaborating with policymakers to foster sound legislation in tax and professional domains. They are committed to safeguarding the independence and confidentiality of tax practitioners, promoting sustainable professional standards, and contributing to the prevention of abuse and illegal activities.

¹⁸⁵ This happens in many countries. In Italian legislation, for example, it is provided that among the activities excluded from the simplified regime due to their use of special VAT regimes are taxi drivers who can, therefore, access it while also continuing to benefit from the exemption from the obligation to issue a receipt or fiscal receipt, as provided for in Article 2 of Presidential Decree 696/1996 (resolution 108/E of 2009).

the rules determining the thresholds to establish whether an entrepreneur qualifies as a small business vary significantly from country to country. Therefore, platforms must interpret and depend on the SME regime rules of each Member State.¹⁸⁶ This creates complexity and focusing solely on the passenger transport sector, where all drivers are VAT-registered, the application of a SMEs regime entirely depends on the turnover thresholds of each specific country, thus creating inconsistency among various European countries.

To simplify the role of platforms, it could be beneficial to ensure, before the ViDA comes into effect, harmonization of SME regime regulations across the various Member States to uniformly manage the small business regime in both the traditional and digital sectors alike and ensure that both sectors have the same obligations. Considering the likely future extension of the ViDA proposal provisions to other sectors, a clarification or preliminary harmonization of SME regime regulations among European countries could facilitate and clarify the applicable thresholds.

The Commission has underscored its intention to expand these regulations to other sectors, emphasizing that only these two sectors have been involved thus far due to their size.¹⁸⁷ However, despite their similar scale, considerable differences exist between the business models of these two sectors: short-term accommodation and passenger transport¹⁸⁸. Particularly within the passenger transport sector, where all drivers on the platform are considered VAT-registered persons providing sustainable economic activities, a situation markedly different from the short-term accommodation sector, where the presence of non-taxable persons occasionally providing services is significantly higher. Given the evident disparities between these two sectors, it is clear that further differences and consequent challenges may arise if and when ViDA provisions are extended to other service providers.

The current proposal appears not entirely aligned with the Commission's objective of ensuring a level playing field between the traditional and platform sectors, as it creates a disparity in treatment between providers operating through platforms and those who do not.

In conclusion, simplifying the role of platforms by avoiding the need for them to check the status of their service providers could be beneficial. In addition, making platforms liable for VAT purposes for all transactions could bring significant advantages. Tax authorities would have fewer entities to monitor, focusing

¹⁸⁶ That also implies that specific member states lack a small business regime, such as Spain, for instance. Certain member states feature significantly high thresholds, while others maintain notably low thresholds. Thus, the efficacy of the small business regime varies considerably among individual members.

¹⁸⁷ The reason for proposing it in such a narrow scope is primarily political. Without broader support from the commission or member states, it's unlikely to gain approval.

¹⁸⁸ Airbnb's sharing economy model empowers hosts to capitalize on assets, facilitating upward mobility, whereas Uber's model focuses on monetizing drivers' time and extracting value from them. The Airbnb platform was crafted to facilitate upward mobility for hosts, while Uber's sharing economy seeks to extract value from its drivers. Indeed, it is also possible to highlight similarities between the two business models, as platforms offering passenger transportation services provide millions of rides per day without owning a single vehicle. In contrast, short-term rental accommodation platforms process hundreds and hundreds of bookings per day without owning a single room.

checks solely on the platforms themselves. This would facilitate full compliance for platforms and streamline the work of tax authorities, reducing the burden of transaction verification for individual providers.¹⁸⁹ However, it is important to consider the peculiarities of sectors such as short-term accommodations, where large hotel chains may prefer to manage VAT independently. Consequently, it would be beneficial to envisage a system wherein platforms are generally responsible for transactions and services offered, with exceptions for authorized providers with specific characteristics and motivations. This could ensure more excellent uniformity and simplify the process for all parties involved.

We must consider that one of the objectives of any reform is to avoid it becoming obsolete or requiring modifications within a few years. This is crucial to ensure forward-looking legislation that takes into account the evolution of digital markets in the long term. It is also useful to save time, resources, and money by seeking to prevent frequent revisions.

¹⁸⁹ This does not preclude the need, in any case, for clarification to ensure that small entrepreneurs in traditional sectors do not have favourable treatment and the opportunity to offer lower prices as they are exempt from VAT.

Chapter 6: Conclusion.

In conclusion, based on the analysis conducted, it is possible to respond to the Research Question:

“To what extent does Article Two of the ViDA proposal efficiently ensure the introduction of a level playing field between online and traditional providers while guaranteeing consistency with core VAT principles?”

Based on the comprehensive evaluation conducted on Article Two of the ViDA Proposal and considering the current landscape of Member States alongside international standards, as well as the concerns raised by representatives of involved parties and recent developments regarding the text of the proposal, it is evident that the proposed measures represent a significant, albeit not exhaustively efficient, step towards ensuring a level playing field between traditional and digital sectors. While they align with international principles set by the OECD, concerns regarding the adherence to the principle of neutrality are apparent, as the full deductibility of input VAT is not assured.

The modernization of tax regulations is imperative in the digital age. From the examination conducted, it can be inferred that reform at the European level is necessary to ensure a level playing field between traditional and online service providers. The proposal aligns with the OECD approach, with the intermediary being the most efficient solution to ensure greater compliance in VAT collection, as demonstrated by similarities with the withholding agent model used in the collection of direct taxes.

To enhance the efficiency of the Proposal, it is imperative to achieve greater clarity in definitions while maintaining necessary flexibility. Such clarifications should emerge within legally binding instruments rather than non-binding laws, ensuring digital platforms are well-informed about their VAT responsibilities.

A crucial point is adherence to the Principle of Neutrality. Considering the recent ECOFIN meeting, it is essential to ensure that this principle is upheld. Implementing a flat-rate regime to ensure service providers can recover input VAT could be a valid and efficient solution.

To ensure an higher level of efficiency, it is essential to establish a sufficient level of harmonization and ensure greater legal certainty. This approach will streamline the operability and application of the legislation, even in anticipation of potential extensions to other sectors in the future.

The EU must consider the diversity of views and approaches from member states that have already created their legislation to manage VAT on these platforms. Therefore, the EU should regulate much more clearly and comprehensively, creating a categorization of these services and a unified vision among European countries, to avoid a level playing field being created at different levels among the various member states.

Implementing the proposal's efficiency is also linked to simplifying platforms' burdens and roles. Therefore, making them responsible for VAT purposes for all their service providers (whether taxable persons or not)

could facilitate and simplify the activities of tax authorities and avoid due diligence issues for platforms. A more comprehensive reform that directly encompasses more sectors could be considered, but realistically, this may not be feasible, as the current reform already struggles to be approved.

Finally, while recognizing the efficiency and importance of the provision, it is essential to carefully consider the needs, capabilities, and burdens on digital platforms. Any potential provision should avoid negatively impacting their business models to prevent future complications and foster continued innovation and growth.

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