



Elman Wall Bennett
Travel VAT and TOMS Consultants

ETOA: VAT on tourism products online: future EU treatment of platforms

David Bennett

13 May 2022

david@elmanwallbennett.co.uk

+44 7795 684 958

Introduction

- The Commission plans to publish proposals for “VAT in the Digital Age” this year
- Our comments today are based not on formal proposals but on our interpretation of the minutes of various meetings – VAT Expert Group and Group on the Future of VAT
- See in particular GFV No 116 (taxud.c.1(2022)669826) and GFV No 122 (taxud.c.1(2022)3461477)
- OECD rules and DAC7

VAT in the Digital Age

Three parts of the Commission's work to date:

1. Digital reporting requirements, including e-invoicing – aims to ensure greater harmonisation in Member States' implementation of digital reporting
2. VAT treatment of the platform economy – current rules are poorly equipped to deal with the growth of platforms and new harmonised rules are required
3. Single EU VAT registration – to simplify compliance

Our focus today will be on platforms and more widely on online distribution. In particular, the 'deemed supply' model under which a platform becomes responsible for the payment of VAT

'VAT in the Digital Age' study has been prepared by Economisti Associati but not yet published

And there has been a public consultation – closed on 5 May – but we think comments, criticisms etc can still be submitted

Introduction in 2025?

What is a platform?

No formal definition yet

But two definitions have been put forward during discussions to date

GFV No 116:

“ ... platform means any software, including a website or a part thereof, and applications, including mobile applications, accessible by users allowing providers to be connected to users for the purposes of carrying out supplies of goods or services, either directly or indirectly”.

Public consultation definition

“Platform” is:

“... the term used in this questionnaire to describe a multi-sided model of transactions, where there are at least three parties involved. The role of the online/digital platform is to facilitate the connection between two distinct but interdependent sets of users (firms or individuals) who interact typically via electronic means. One of the parties to the platform (‘provider’) offers access to assets, resources, time and/or skills, goods and/or services to the other party (‘consumer’), in return for monetary or non-monetary consideration. A platform usually charges a fee for the facilitation of the transaction. It does not possess any of the assets on offer nor usually provide the services via its own staff”.

Platforms continued

It seems clear that the proposed new rules will only apply where the platform does not act in its own name

It also seems clear that online travel agents, bed banks and other types of travel supplier can be a platform, provided they do not act in their own name

Not limited to platforms in the EU

The deemed supplier model



This seems to be the Commission's preferred approach

It tackles the non-taxation of certain supplies made via platforms by making the platform responsible to pay the VAT

Does not affect the position of providers which are VAT registered and paying VAT on supplies made via a platform

Non-EU platforms to be treated in the same way

Deemed supplier model continued

It is suggested that the model would apply when the provider is:

- A non-EU person without a local VAT number
- An EU established non-taxable person; or
- A member of the ‘group of four’, namely:
 - A taxable person unable to recover input tax (i.e. a wholly exempt taxable person)
 - A person within the flat rate scheme for farmers
 - A person subject to the SME scheme (contrast direct and offline sales by an SME with sales via a platform)
 - A non-taxable legal person

Collectively the ‘group of 6’

Deemed supplier continued

Three approaches in terms of the scope of services to be included in the deemed supplier model have been discussed:

1. A narrow approach – only the short term renting of accommodation plus ride on demand transport services and delivery services
2. A wider approach – all accommodation and all transport services
3. An all-encompassing approach – all services

VAT on the deemed supply

If a platform is the deemed supplier of travel services, we might expect that VAT would be due under TOMS.

But this seems not to be the intention, use of TOMS by a platform (not acting in own name) being described as “evasion” and “abusive”

GFV No 122 says it would be “prudent” to exclude platform supplies from TOMS

Therefore, a platform would pay VAT in the member state of supply at the rate in that country – even if the provider would not itself have an obligation to pay VAT

In summary:

1. Platform does not act in own name, provider is not in the group of 6 – no deemed supply
2. As above, but provider is in the group of 6 – platform makes a deemed supply
3. Platform acts in own name – TOMS applies (subject to normal conditions)

Suggested discussion points



Does a platform need to take payment to be caught by these rules?

What about distribution involving two or more platforms?

What happens if the transaction itself is not online?

Taxation of services provided by non-entrepreneurs and small entrepreneurs (SMEs)

Interaction of platform rules and TOMS. Will the platform rules encourage platforms to adopt acting in own name status?

Way forward