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Short-term Rental Platforms as Deemed Suppliers in the EU VAT System

Table of Contents

1. Abstract

The rapid growth of the platform economy has revolutionized various sectors, particularly the accommodation industry. Digital platforms like Airbnb, Booking.com, Couchsurfing or HomeExchange have become central to the short-term rental market, enabling easy and efficient transactions between property owners and renters. The expansion of the platform economy in this sector, presents unique challenges and opportunities for VAT collection in the EU.

The primary objective of this paper is to analyse the legal aspects of the EU VAT treatment of transactions conducted through platforms in the accommodation sector with a particular focus on the potential role of these platforms in VAT collection as operators deemed to be suppliers. This regime is the most comprehensive solution, placing full liability on platforms for accounting for VAT on the transactions they intermediate. By examining existing models of deemed supplier regime in EU VAT system and their applicability, the paper aims to provide a comprehensive analysis and propose recommendations for improving VAT compliance in this burgeoning sector.

2. Short-Term Rental Sector of the Platform Economy

2.1. Historical Background

Tourism is one of the largest service industries globally[1]. Consequently, there is an increased demand for services to meet tourists' needs, such as accommodation. The World Economic Forum predicts that by 2025, 17% of the annual revenue of the global hospitality sector will come from short-term rental ("STR") services[2]. Therefore, the role of platforms operating in this sector is growing.

While the platform economy includes various services platforms, the STR sector stands out as its largest segment. OECD data highlights the substantial scale of this sector, while European Commission ("EC") reports indicate that platforms have the largest market share in the accommodation industry relative to other sectors in EU[3]. Given its economic importance and regulatory complexity, STR platforms require the most urgent intervention, which is why the paper focuses on this area.

Accommodation services existed before the rise of digital platforms, but these platforms have been pivotal in the sector's rapid growth over the past decade[4]. Previously, the potential of this sector was constrained by challenges in securing accommodation for specific dates and locations, as well as by various risks, including concerns related to security and payment processes[5]. The development of technology has transformed this situation. The transactions have become relatively cheap and simple due to software provided by platforms, which has reduced the cost of finding, tracking, and verifying accommodation bookings[6]. Consequently, the accommodation sector has undergone significant changes.

Platforms for the STR sector began to emerge as early as the 1990s. One of the pioneers was HomeExchange, founded in 1992 in Washington DC by Ed Kushins[7]. This platform allowed members to swap homes, typically free of charge, although hosts may charge guests a cleaning fee[8].

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[1] Figures indicate that there were 1.2 billion international travellers in 2017, and it is estimated that by 2030, this number will reach 1.8 billion. Martine Bakker, Elize Hendrica and Louise Twining-Ward, *Tourism and the Sharing Economy: Policy & Potential of Sustainable Peer-to-Peer Accommodation* (World Bank Group 2018) 15.

[2] ibid 29.

[3] OECD, *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration* (OECD 2021); European Commission, Directorate General for Taxation and Customs Union and others, *VAT in the Digital Age: Final Report. Volume 2, The VAT Treatment of the Platform Economy* (Publications Office 2022) 42.

[4] European Commission. Directorate General for Internal Market, Industry, Entrepreneurship and SMEs, VVA, and Spark Legal Network, *Study on the Assessment of the Regulatory Aspects Affecting the Collaborative Economy in the Tourism Accommodation Sector in the 28 Member States (580/PP/GRO/IMA/15/15111J): Final Report* (Publications Office 2018) 10–11.

[5] Kellen Zale, 'Scale and the Sharing Economy' in John J Infranca, Michèle Finck and Nestor M Davidson (eds), *The Cambridge Handbook of the Law of the Sharing Economy* (Cambridge University Press 2018) 39–40.

[6] Bakker, Hendrica and Twining-Ward (n 1) 15.

[7] 'HomeExchange - #1 Home Exchange Community' (*HomeExchange*) <https://www.homeexchange.com/> accessed 6 September 2021.

[8] 'Terms of Use - Home Exchange' (6 September 2021) <https://www.homeexchange.com/p/general-terms-of-use> accessed 6 September 2021.

Another early platform in the STR sector was Booking.com, which started in 1996. Unlike HomeExchange or Airbnb, Booking.com is often classified as an online travel agency (OTA). These are online businesses that allow customers to book various travel-related services[9].

Many well-known STR platforms also emerged in the first decade of the 21st century. For instance, Couchsurfing, created by US programmer Casey Fenton, started in 2003. This platform built a community of users who hosted others and sought a 'couch' to sleep on without paying[10].

Despite Couchsurfing's success, it is not as famous as another platform that entered the accommodation market around the same time – Airbnb. Founded in San Francisco by Joe Gebbia, Brian Chesky, and Nathan Blecharczyk, Airbnb's launch date is often cited as either 2007 or 2008[11], depending on whether one considers the launch of the website (2007) or its formal legal establishment (2008). Airbnb primarily offers accommodation rentals through its platform, but over the years, it has significantly expanded its range of services, for example, by introducing the option to book local 'experiences' such as sightseeing tours, wine tasting, or cooking classes[12]..

Following Airbnb's success, other platforms offering similar services, such as HomeAway, Onefinestay, Xiaozhu, Tujia, and Wimdu, have also entered the accommodation market. Interestingly, 2019 saw the launch of Fairbnb, which aims to better regulate short-term rentals and retain platform revenues within the local economy[13]. The emergence of platforms like Fairbnb can be seen as a positive sign of the changes taking place in the accommodation sector, particularly the promotion of more socially responsible business practices[14].

2.2. Short-Term Rental Platforms

Although platforms occupy a central position in the platform economy, defining what they actually are is not easy. A platform is not an 'object' but rather a 'functionality,' a shared space that facilitates exchanges between parties[15]. In principle, transactions in the platform economy involve two categories of entities: the platforms and their users. Among platform users, a distinction can be made between entities that provide STR services (underlying suppliers, hosts) and entities that purchase them (underlying buyers, guests). The accommodation service provided between platform

[9] Bakker, Hendrica and Twining-Ward (n 1) 11.
[10] Constantin Bratianu, 'The Crazy New World of the Sharing Economy' in Elena-Mădălina Vătămănescu and Florina Magdalena Pînzaru (eds), *Knowledge Management in the Sharing Economy*, vol 6 (Springer International Publishing 2018) 9.
[11] For example, the year 2008 is cited by Hong Ngoc Nguyen, Timo Rintamäki and Hannu Saarijärvi, 'Customer Value in the Sharing Economy Platform: The Airbnb Case' in Anssi Smedlund, Arto Lindblom and Lasse Mitronen (eds), *Collaborative Value Co-creation in the Platform Economy*, vol 11 (Springer Singapore 2018) 233; Katarzyna Śledziewska-Kołodziejska and Renata Włoch, *Gospodarka cyfrowa: jak nowe technologie zmieniają świat* (Wydawnictwo Uniwersytetu Warszawskiego 2020) 267.
[12] *Airbnb Inc in Travel (World)* (Euromonitor International 2018) 7–8 <https://www.euromonitor.com/airbnb-inc-in-travel/report> accessed 12 February 2023.
[13] Marina Petruzzi, Catarina Marques and Valerie Sheppard, 'To Share or to Exchange: An Analysis of the Sharing Economy Characteristics of Airbnb and Fairbnb.Coop' [2021] International Journal of Hospitality Management 2–3.
[14] ibid 9.
[15] Marie Lamensch and others, 'New EU VAT-Related Obligations for E-Commerce Platforms Worldwide: A Qualitative Impact Assessment' (2021) 13 World Tax Journal 444–445.

users is known as the underlying service; the platform essentially acts as a digital intermediary in this transaction.

It should be noted that the term 'platforms' has started to appear in EU legislation. For example, the definition of a platform is included in Council Directive (EU) 2021/514[16]. According to this legal act, a platform means: "*any software, including a website or a part thereof and applications, including mobile applications, accessible by users and allowing 'sellers' to be connected to other users for the purpose of carrying out a 'relevant activity', directly or indirectly, to such users. The term also includes any arrangement for the collection and payment of a consideration in respect of the 'relevant activity'(...)".*

Importantly, the term 'interface' is increasingly being used in EU law instead of 'platform'. For example, the term of 'electronic interface' is used by the VAT Directive[17]. However, the concept is not defined there. Article 14a (1) and (2) of the VAT Directive only give examples of what an electronic interface can be: "*Where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or similar means (...)*". The concept is broad, and the use of the phrase 'similar means' makes the catalogue of types of electronic interfaces open-ended. This position is confirmed by the EC's Explanatory Notes, where it is indicated that the term 'electronic interface' is to be understood broadly and that 'similar means' has been used to also take into account other electronic forms that enable the conclusion of a sales contract and technological developments that may occur in the future[18].

It is not entirely clear why the EU legislator sometimes uses the term 'platform' and sometimes the term 'electronic interface'. It should be noted that these definitions (leaving aside, of course, their nuances related to the purposes for which they appear in the acts in question) actually refer to the same thing – the digital tools by which transactions are facilitated.

STR sector platforms generally offer websites and applications to connect at least two sides of the market, as well as to develop business and provide STR services in different countries[19]. In general, it is the actions of users that co-create the value of a platform[20], as they generally do not own the assets on which transactions are based[21].. Thus, rather than building a competitive advantage on their own assets, platforms 'benefit' from users' assets. This means that the ability to generate profits

[16] Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation [OJ L 104, 25.3.2021, pp. 1–26].
[17] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [OJ L 347, 11.12.2006, pp. 1–118].
[18] European Commission, *Explanatory Notes on VAT E-Commerce Rules. Council Directive (EU) 2017/2455. Council Directive (EU) 2019/1995. Council Implementing Regulation (EU) 2019/2026* (European Commission 2020) 11.
[19] Claudia Vienken, Nizar Abdelkafi and Cyrine Tangour, 'Multi-Sided Platforms in the Sharing Economy – A Case Study Analysis for the Development of a Generic Platform' in Rim Jallouli and others (eds), *Digital Economy. Emerging Technologies and Business Innovation* (Springer International Publishing 2019) 381.
[20] Antti Hautamäki and Kaisa Oksanen, 'Digital Platforms for Restructuring the Public Sector' in Anssi Smedlund, Arto Lindblom and Lasse Mitronen (eds), *Collaborative Value Co-creation in the Platform Economy*, vol 11 (Springer Singapore 2018) 94–95.
[21] Oksana Gerwe and Rosario Silva, 'Clarifying the Sharing Economy: Conceptualization, Typology, Antecedents, and Effects' 34 Academy of Management Perspectives 65, 71.

is directly proportional to the value of the personal assets that users bring to it[22]. For this reason, platforms can grow much faster than their traditional competitors (e.g., Airbnb versus a traditional hotel chain) because they do not need to make any investment in the assets underlying the transaction (such as real estate) but only attract more suppliers to offer their resources[23].

2.3. Characteristics of Short-Term Rental Sector

The rapid development of the STR platform economy presents both opportunities and challenges. On the opportunity side, the growth of tourism, the lowering of barriers for hosts to enter the STR market, and cheaper, more accessible accommodations for guests are significant benefits. The platform economy has made accommodations more affordable and accessible to a broader range of customers, leading to more and longer trips[24]. Platforms allow individuals to offer rooms or entire houses as tourist accommodations directly to consumers without needing to create a website or handle payments[25]. Without platforms, providing accommodations such as single rooms by private individuals would be practically impossible, leaving these offerings outside the market[26].

However, this growth also raises several concerns. First, platforms have a natural tendency to create monopolies. Due to their rapid scalability, early players in a sector often become strong market leaders[27]. New platforms entering the market lack the size necessary to compete effectively. This increases the risk of exploitation by the monopoly platform, such as by making it more difficult for new companies to enter the market[28].

The development of the platform economy may also have a negative impact on competition with traditional business models. In the context of the STR platform economy, it should be noted that the hospitality sector is subject to several specific rules[29], which platforms are often not obliged to comply with, which can result in a lack of a level playing field and operating conditions[30]. The development of STR platforms also raises concerns about the impact on the housing market[31]. According to the World Bank's assessment, C2C short-term rentals may increase housing prices

[22] Aurélien Acquier, 'Uberization Meets Organizational Theory: Platform Capitalism and the Rebirth of the Putting-Out System' in Nestor M Davidson, Michèle Finck and John J Infranca (eds), *The Cambridge Handbook of the Law of the Sharing Economy* (Cambridge University Press 2018) 21.
[23] Gerwe and Silva (n 21) 71.
[24] Orly Lobel, 'Coase and the Platform Economy' in John J Infranca, Michèle Finck and Nestor M Davidson (eds), *The Cambridge Handbook of the Law of the Sharing Economy* (Cambridge University Press 2018) 68.
[25] Bakker, Hendrica and Twining-Ward (n 1) 12.
[26] Theresia Theurl and Eric Meyer, 'Cooperatives in the Age of Sharing' in Kai Riemer, Stefan Schellhammer and Michaela Meinert (eds), *Collaboration in the Digital Age: How Technology Enables Individuals, Teams and Businesses* (Springer International Publishing 2019) 195–196.
[27] Mokter Hossain, 'Sharing Economy: A Comprehensive Literature Review' (2020) 87 International Journal of Hospitality Management 102470, 8.
[28] ibid.
[29] Adam Pawlicz, Uniwersytet Szczeciński, and Wydawnictwo Naukowe, *Ekonomia współdzielenia na rynku usług hotelarskich: niedoskonałości, pośrednicy, regulacje* (Wydawnictwo Naukowe Uniwersytetu Szczecińskiego 2019) 75.
[30] Jeroen Oskam and Albert Boswijk, 'Airbnb: The Future of Networked Hospitality Businesses' (2016) 2 Journal of Tourism Futures 35–36.
[31] Nestor M Davidson and John J Infranca, 'The Place of the Sharing Economy' in John J Infranca, Michèle Finck and Nestor M Davidson (eds), *The Cambridge Handbook of the Law of the Sharing Economy* (Cambridge University Press 2018) 208–209.

and rents[32], although this increase is also influenced by other factors[33]. The STR platform economy has also been criticized for contributing to the phenomenon known as overtourism, which, in simple terms, refers to the overcrowding of popular tourist destinations[34].

Additionally, the platform economy poses regulatory challenges. One difficulty is the potentially expansive geographical market in which platforms operate. Platforms often do not have a physical presence in the jurisdiction where the transactions they facilitate occur[35] (for example, a platform based in one country facilitates the rental of a house located in another country). As a result, regulatory issues often require addressing across multiple jurisdictions.

Another challenge of regulating the platform economy is its scale[36]. Due to its dichotomy[37], there are massive platforms like Airbnb on one end of the spectrum, while on the other end, the individual transactions they facilitate are often small in scale. Although small-scale activities are typically subject to more lenient regulations, their potential cumulative impact transcends their individual nature, collectively giving rise to a myriad of negative consequences[38]. Existing regulatory regimes inadequately capture the scale configurations inherent in the platform economy, where the cumulative effects of individual, small-scale actions can culminate in global issues.

For these reasons, the STR platform economy has become the subject of considerable attention in the regulatory area. In this context, three main strategies for action can be distinguished: inaction, banning or restricting platform activities, and making legislative changes. Given that overly restrictive regulations can discourage innovation and their absence can distort competition in the STR market, the third approach seems to make the most sense, provided it remains consistent with the principle of proportionality.

3. Short-Term Rental Platforms in EU VAT System

3.1. Challenges for EU VAT System

Value-added tax (VAT) is one of the most important sources of public revenue in the EU and plays a key role in the functioning of the internal market[39]. The development of the platform economy creates significant ambiguity regarding the VAT treatment of transactions conducted via platforms. This VAT system was introduced in the EU before the rise of the digital economy, rendering its provisions inadequate for new business models. The most significant problems faced by the platform economy under the EU VAT system stem from divergent interpretations regarding the

[32] Bakker, Hendrica and Twining-Ward (n 1) 28–29.
[33] European Commission. Directorate General for Internal Market, Industry, Entrepreneurship and SMEs, VVA, and Spark Legal Network (n 4) 44–45.
[34] Bakker, Hendrica and Twining-Ward (n 1) 31.
[35] OECD, *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration* (n 3) 22.
[36] Kellen Zale, 'When Everything Is Small: The Regulatory Challenge of Scale in the Sharing Economy' (2016) 53 San Diego Law Review 1016.
[37] Zale (n 5) 38.
[38] ibid 43.
[39] AJ van Doesum and others, *Fundamentals of EU VAT Law* (Second edition, Kluwer Law International BV 2020) 3.

status of entities involved in supplying services through platforms and the nature of the platform services themselves.

3.1.1. Hosts as VAT Taxable Persons

One key question is whether transactions that initially have a consumer-to-consumer (C2C) nature can evolve into business-to-consumer (B2C) interactions. This transformation can have significant implications, as the law often imposes higher liability and specific obligations (including tax obligations) on professionals engaged in business activities. Much ambiguity surrounds the status of the underlying suppliers (hosts), particularly regarding when and under what conditions they can be considered private entities, businesses, or platform employees. Facilitated by new technologies and the platform's infrastructure, these actors can engage in transactions with relative ease, potentially turning their activities into regular and profitable ventures.

A particularly controversial issue revolves around determining whether hosts operating through STR platforms can be considered VAT taxable persons. EU VAT is applicable when the person carrying out a certain transaction is a 'taxable person'. Article 9 of the VAT Directive defines a taxable person' as any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

According to some legal scholars, the mere fact that a person decides to join a platform to offer goods or services to other users in exchange, in principle, for monetary consideration, implies a certain intention to generate income on a continuing basis, which leads to the conclusion that it is an economic activity[40]. A similar perspective is endorsed by the EC which notes that while the continuity of the activity of each host receiving consideration from a traveller for renting accommodation must be assessed individually, joining a platform may suggest an intention of the host to provide accommodation based on a certain continuity (it is not a one-off transaction)[41].

However, although suppliers register on platforms, it is not obvious that they do so to continuously receive income, as their motivation may be, for example, simply to see how the platform works[42]. The determination of the host's tax status can also be called into question if he only exploits the property occasionally and without a staff or property organisation[43].

[40] Becoming part of a platform signifies a commitment akin to that of a producer, trader, or service provider. This engagement in activities inherently constitutes economic involvement, thus classifying the participant as a taxable entity. In essence, evading the classification of a 'taxable person' for sharing economy providers becomes nearly unfeasible. Carrie Brandon Elliot, 'Taxation of the Sharing Economy: Recurring Issues' (2018) 72 Bulletin for International Taxation <ibfd.org> accessed 22 November 2022; Similar view is also presented by: Fernando Matesanz, 'VAT Treatment of the Sharing Economy' (2021) 32 International VAT Monitor 104–105.
[41] European Commission, 'Group on the Future of VAT No 086: VAT Treatment of the Sharing Economy, Taxud.c.1(2019)1950741'.
[42] Christina Maria Pollak, *How Should Peer-to-Peer Housing and Transportation Services Provided via Sharing Economy Platforms Be Treated under the VAT Directive?* (Lund University 2018).
[43] Marcos Álvarez Suso, 'E-Platforms Providing Services in the Short-Term Rental Accommodation Market: The Challenges for Taxation of These Services under the EU VAT' (2020) 31 International VAT Monitor 15.

Nevertheless, it can generally be assumed that if a host operating through a platform utilizes the property to generate income, the host will be considered a taxable person in most cases[44]. Consequently, the host's economic activity will be subject to VAT[45]. However, each case needs to be analysed individually on a case-by-case basis.

It should also be noted that for an economic activity to be subject to VAT it must be carried out independently. According to Article 10 of the VAT Directive, the condition that the economic activity is carried out independently excludes VAT taxation of employees.

Determining whether STR platforms should be considered hotel conglomerates, effectively 'employing' hosts around the world, is not easy. Although platforms generally treat underlying suppliers as independent contractors, the level of control they exercise over a transaction may justify the view that these suppliers are employees of the platform. It is widely agreed in the literature that platforms such as Airbnb currently do not 'employ' hosts because the degree of control they exercise is not sufficient[46]. However, as the business models of the STR platform economy evolve, this situation may one day change.

3.1.2. Nature of STR Platform Services

It is challenging to definitively determine the nature of services provided by STR platforms. There is uncertainty as to whether STR platforms offer direct accommodation services or, given that they are not property owners, whether they primarily provide their own (electronic or intermediation) services by matching supply and demand.

In this context, it is worth noting the ruling of the Court of Justice of the European Union ('CJEU') in the Airbnb Ireland case of 2019[47] (although it did not concern VAT, it may serve as a source of inspiration). In that case, the CJEU agreed with Airbnb in assessing that the platform's services cannot be considered merely ancillary to the mainSTR service. They are considered a separate service, even if they are part of a broader transaction. It is crucial to highlight that the CJEU arrived at a fundamentally different conclusion when examining the nature of services provided by the Uber platform. In its judgments in cases C-434/15[48] and C-320/16[49], the Court determined that the

[44] Especially considering that the CJEU broadly defines the concept of economic activity in its rulings, for example, in case *Slaby and Kuc*, the court stated that if the party has taken active steps to market property by mobilizing resources similar to those deployed by producers, traders, or persons supplying services, then these initiatives go beyond mere exercise of the management of private property. This interpretation highlights that activities aiming at income generation, even by private individuals, can be classified as economic activity, triggering VAT obligations (joined cases *Jarosław Słaby v Minister Finansów and Emilian Kuć and Halina Jeziorska-Kuć v Dyrektor Izby Skarbowej w Warszawie* [2011] CJEU C-180/10 and C-181/10, paras 39-41).

[45] Katerina Pantazatou, 'Taxation of the Sharing Economy in the European Union' in Nestor M Davidson and Michèle Finck (eds), John J Infranca, *The Cambridge Handbook of the Law of the Sharing Economy* (1st edn, Cambridge University Press 2018) 372–373.

[46] Rashmi Dyal-Chand, 'Regulating Sharing: The Sharing Economy as an Alternative Capatilist System' (2015) 90 Tulane Law Review 297–301.

[47] *Criminal proceedings against X, interveners: YA, Airbnb Ireland UC, Hôtelière Turenne SAS, Association pour un hébergement et un tourisme professionnels (AHTOP), Valhotel* [2019] CJEU C-390/18.

[48] *Asociación Profesional Elite Taxi v Uber Systems Spain, SL* [2017] CJEU C-434/15.

[49] *Criminal proceedings against Uber France* [2018] CJEU C-320/16.

intermediation services provided by Uber constitute an integral component of a comprehensive service, wherein the principal element is the provision of transportation services.

The above CJEU rulings also raise the question of whether, in fact, the business models of Airbnb and Uber are so diametrically opposed that the service of one platform should be treated as an separate e-service (information society service) and the other as a component of the underlying service.

The literature points out that Airbnb has functions comparable to Uber[50], but at the same time, it is emphasised that the situation of hosts is different from that of Uber drivers, as their income is generated by available capital (real estate) and not by their labour[51], and Uber appears to have more control over its users[52]. It must be agreed that the factor that determines the nature of the platform service is the degree of control it exercises over each transaction[53]. The more passive and automated the platform's role, the more the service it provides takes on the characteristics of an e-service.

Under EU VAT regulations, services provided by STR platforms are generally not considered as part of the underlying service (see comments in point 3.1.3 below), but rather as separate services. However, the problem lies in the classification of these services - in some Member States, they are regarded as electronically supplied services, while in others, they are seen as intermediation services[54]. This issue is significant because the classification of platform services into one or the other category is linked to different places of supply, and consequently, places of taxation. Divergent classifications of platform services between Member States may therefore lead to double taxation or non-taxation[55].

Under Article 46 of the VAT Directive, the place of supply of services to non-taxable persons by an intermediary acting in the name and on behalf of third parties is the place where the underlying transaction is carried out. If the service of STR platform is deemed intermediation, then the VAT is charged in the Member State where the property is situated. Article 58 of the VAT Directive, on the other hand, provides that the place of supply of electronic services to non-taxable persons is the place where such person is established, has his permanent address or usually resides. If the STR platform service is categorized as an electronic service, then the VAT is levied at the place of residence of the consumer. Both Articles 46 and 58 of the VAT Directive constitute *lex specialis* to the general rule of the place of supply of services set out in Article 45 of the VAT Directive, so

[50] Marco Inglese, *Regulating the Collaborative Economy in the European Union Digital Single Market* (Springer International Publishing 2019) 128–129.
[51] However, their earnings include a labor component, which can be divided into the following categories: initial setup efforts (preparing the apartment, setting up the platform account, and providing website details); ongoing sales activities (determining prices, managing reservations, and responding to clients); and variable activities per booking (welcoming guests and cleaning the apartment). Jeroen A Oskam, *The Future of Airbnb and the 'Sharing Economy': The Collaborative Consumption of Our Cities* (Channel View Publications 2019) 63–64.
[52] Johanna Interian, 'Up in the Air: Harmonizing the Sharing Economy through Airbnb Regulations' (2016) 39 Boston College International and Comparative Law Review 151–154.
[53] Erwan Loquet and Dimitrios Karoutis, 'European Union - VAT Considerations on ECJ's Ruling That Airbnb Is Not a Real Estate Agent' (2020) 31 International VAT Monitor 1–5.
[54] European Commission, 'Impact Assessment Report, SWD(2022) 393 Final'.
[55] European Commission, 'Group on the Future of VAT No 086: VAT Treatment of the Sharing Economy, Taxud.c.1(2019)1950741' (n 42); European Commission, 'Impact Assessment Report, SWD(2022) 393 Final' (n 55).

it is questionable whether Article 46 of the VAT Directive can be regarded as *lex specialis* to Article 58 of the VAT Directive or vice versa[56].

A report commissioned by the European Commission revealed that the majority of surveyed platforms, approximately 80%, considered their services as electronic, while only about 20% classified them as intermediation services[57]. Member States with relatively developed tourism industries tend to treat STR platform services as intermediation services, making them taxable at the location of the property[58]. Conversely, Member States where the tourist originates often take the opposite approach[59].

Doctrine on this matter is also divided. Some scholars argue that applying the place of supply principle outlined in Article 58 of the VAT Directive provides a more legally certain approach, and this qualification implements the principle of taxation at the place of consumption[60]. However, some legal commentators argue that since the main purpose of the platform is to connect supplier and customer, which is the core of the intermediary's activity, the services provided by platforms should be recognized as intermediation services[61].

Due to these discrepancies, it is welcome news that the EC plans to clarify that a service provided by a platform to non-taxable persons should be considered as an intermediation service (planned Article 46a of the VAT Directive)[62].

3.1.3. STR Platforms as Undisclosed Agents

The VAT Directive makes a distinction between intermediaries acting both in the name of and on behalf of others and those acting in their own name but on behalf of third parties. In the latter case, we encounter an intermediary defined in legal writings as an 'undisclosed agent'[63] or more precisely as an 'agent of an undisclosed principal'[64]. These entities, acting in their own name, are not seen as intermediaries but as entities directly supplying goods or services to the customer[65].

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[56] Christina Pollak, *Platforms in EU VAT Law: A Legal Analysis of the Supply of Goods* (Kluwer Law International, B V 2022) 81.
[57] European Commission, Directorate General for Taxation and Customs Union and others (n 3) 36–37.
[58] ibid 70.
[59] In absolute terms, the revenue shifting would not be significant: EUR 209 million in the case of adopting the intermediary services approach and EUR 50 million under the electronic services approach, which corresponds respectively to 2.9 and 0.7 percent of the VAT revenue from platform-based STR economy: ibid 126.
[60] Pollak (n 57) 85.
[61] Madeleine Merkx and others, 'VAT in the Digital Age Package: Viva La ViDA or Livin' La ViDA Loca?' [2023] EC Tax Review 138–139.
[62] Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age [COM/2022/701 final]; This approach has been maintained in the compromise text: Draft Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age - compromise text 8 May 2024 [2022/0407(CNS)] and in the compromise text finally accepted by ECOFIN: Draft Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age – compromise text 5 November 2024 [2022/0407(CNS)].
[63] This term is used, for example, by Christian Amand, 'Disclosed/Undisclosed Agent in EU VAT: When Is an Intermediary Acting in Its Own Name?' (2021) 32 International VAT Monitor; Matesanz, 'VAT Treatment of the Sharing Economy' (n 41).
[64] 'Opinion of Advocate General Kokott Delivered on 24 February 2005 in Case C-305/03 Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland', par. 41.
[65] Giorgio Beretta, *European VAT and the Sharing Economy* (Kluwer Law International, BV 2019) 284–285.

Under Article 28 of the VAT Directive, where a taxable person, acting in his own name but on behalf of a third party, takes part in the supply of services, that taxable person is deemed to have received and supplied those services himself.

This means that if a STR platform were to be recognized as an undisclosed agent, it would be obligated to collect VAT on the transactions it facilitates (accommodation). In this scenario, the platform service and the underlying service would be merged (as pointed out in the literature, the service provided by an undisclosed agent does not constitute a stand-alone service - it is integrated into the commissioned service[66]). This implies that the platform would be required to charge, collect, and remit VAT on the total price of the STR service, not just on the agreed fee or commission for the intermediary services.

Article 28 of the VAT Directive (the wording of which has not changed since the 1970s) was not certainly intended to cover intermediaries such as platforms, as such entities did not exist in the market at the time. However, the provision is worded so broadly and generally that in practice there are doubts as to whether it does not cover platforms of the accommodation sector in certain cases[67].

The uncertainties in this regard appear to be deepened by the CJEU's ruling in the Fenix case[68]. The CJEU found that Article 9a of the Council Implementing Regulation no 282/2011 ("IR")[69] does not change the normative content established by Article 28 of the VAT Directive but, on the contrary, it limits itself to specifying its application[70]. It is worth noting that Article 9a IR explicitly indicates that if a platform fulfils at least one of the following conditions: (i) approves the charging of payment to the customer, (ii) approves the supply of the facilitated services, or (iii) establishes general terms and conditions for the supply of the facilitated services, then it will not be able to rebut the presumption and in consequence it will be treated as a deemed supplier. Therefore, the conditions for the participation of platforms in the supply of services indicated in Article 9a of the IR should be considered in the interpretation and application of Article 28 of the VAT Directive. Since these three characteristics are present in all the business models of accommodation sector platforms this would mean that they could be treated as deemed suppliers for the purposes of Article 28 of the VAT Directive.

However, it is worth bearing in mind that the judgment in question was delivered under specific factual circumstances and primarily concerned the conditions for the application of Article 9a of the IR and their compatibility with Article 28 of the VAT Directive. It would therefore appear that Article 9a IR is *lex specialis* to Article 28 of the VAT Directive, and the specific conditions contained therein are laid down for the specific entities defined therein. They should not be extended too broadly to other platforms not directly affected by Article 9a of the IR. Nevertheless,

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[66] Lily Zechner, 'Understanding VAT in Three-Party, Platform-Based Business Models: Which Party Is Supplying Which Service?' (2022) 31 EC Tax Review 181.
[67] For example: Beretta (n 66); European Commission, 'VAT Expert Group No 095: VAT Treatment of the Sharing Economy, Taxud.c.1(2020)5816454'; Matesanz, 'VAT Treatment of the Sharing Economy' (n 41); Suso (n 44).
[68] *Fenix International* [2023] CJEU C-695/20, par. 86.
[69] 'Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax', Pub. L. No. OJ L 77, 23.3.2011, p. 1–22.
[70] *Fenix International* (n 69), par. 86.

due to these uncertainties, it cannot be categorically excluded that STR platforms may be considered undisclosed agents in certain cases - each situation currently requires a case-by-case analysis.

3.2. Opportunities for EU VAT System

While the dynamic growth of the platform economy presents challenges to the EU VAT system, it also offers new opportunities for enforcing tax obligations, notably due to the increased traceability facilitated by platform intermediation.

The OECD distinguishes the following roles of platforms in VAT compliance: (i) educational and communication role, (ii) formal cooperation agreements, (iii) information sharing role, (iv) joint and several liability, (v) collection/withholding role, and (vi) full liability role[71] (known also as deemed supplier regime, DSR[72]).

The least burdensome role for platforms appears to be the educational and communication role. By playing this role, platforms provide accurate information to their suppliers about their VAT obligations[73]. The key objective of this policy is to promote legal compliance.

To ensure mutually beneficial cooperation between platforms and tax authorities, cooperation agreements can also be established. These agreements typically require platforms to provide information[74] or assign certain enforcement obligations to the platform, such as blocking and removing non-compliant users[75]. These agreements are entered into voluntarily, so they also do not seem to impose a significant burden on platforms.

Platforms may also be required to transmit the information they collect about transactions conducted through them[76], upon request, spontaneously, or periodically. An interesting solution could be the introduction of a real-time reporting obligation by platforms or the option for platform users to consent to their payment data being sent directly to tax authorities immediately.

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[71] OECD, *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration* (n 3) 59–61.

[72] It should be noted that the OECD mainly uses the term 'full liability regime', explaining that this regime makes the platform fully and solely liable for assessing, collecting and remitting the VAT/GST due on the online sales it facilitates. OECD, *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales* (OECD 2019); OECD, *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration* (n 3) Nonetheless, in the context of the European VAT system, the EU institutions seem to use the phrase 'deemed supplier' most frequently. Given the above, the term the 'deemed supplier' regime will be used.

[73] For example, a platform operator can send each vendor a general statement on their tax obligations when they first register on the platform and in periodic emails, text messages or alternative means of communication. OECD, 'Code of Conduct: Co-Operation between Tax Administrations and Sharing and Gig Economy Platforms' <www.oecd.org> accessed 5 April 2021.

[74] OECD, *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration* (n 3) 66–67.

[75] Beretta (n 66) 308–311.

[76] According to the OECD report, as a general practice, STR platforms typically hold the following information: (i) user identification data (name and surname, email address, telephone number, residential address, tax identification number), (ii) transaction value, (iii) property address, (iv) payment data. OECD, *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration* (n 3) 105–106.

The imposition of a reporting obligation on the platform can be introduced as a stand-alone measure or as a complement to its other roles[77].

According to CJEU case law, the imposition of reporting obligations on platforms, in principle, is not contrary to EU law[78], but it should be proportionate. In this context, it is worth noting the overlapping reporting obligations in the VAT area imposed on STR platforms by the DAC7 Directive[79] and Article 242a of the VAT Directive[80]. Legal scholars view this situation negatively. It is emphasised that the cumulative effect of the various reporting obligations that platforms must comply with in the field of direct and indirect taxation should not be underestimated – such inconsistent and sometimes overlapping obligations can, as a whole, significantly affect the resources of platform operators and therefore place a disproportionate burden on them[81].

Platforms may also be held liable if the underlying supplier does not correctly account for VAT. Under the joint and several liability of platforms, tax authorities have the option to hold the platform facilitating the transaction jointly liable for the unpaid VAT[82].

The VAT Directive provides an option for Member States to introduce joint and several liability. Under Article 205 of that Directive, Member States may decide that a person other than the person liable for payment of VAT is to be held jointly and severally liable for payment of that tax. This means that Member States can adopt their own rules to ensure more efficient collection of VAT and introduce joint and several liability for platforms. Several Member States (including the UK, before its exit from the EU) have chosen to adopt such a solution[83].

The platform may also be directly liable for collecting the VAT due on the underlying supply in roles such as withholding agent or deemed supplier.

As the OECD points out, the withholding role of platforms is regarded as a 'lighter' version of the DSR. In this role, the platform merely collects or withholds the VAT due on the underlying supplies facilitated and is not fully liable for their accounting. In contrast to the full liability role of the

[77] ibid 69–70.
[78] *Airbnb Ireland UC v Région de Bruxelles-Capitale* [2022] CJEU C-674/20; *Airbnb Ireland and Airbnb Payments UK* [2022] CJEU C-83/21.
[79] Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (n 16). Importantly, DAC7 concerns direct taxes; however, the information transferred under the DAC7 Directive between Member States may be used for the purposes of VAT and other indirect taxes.
[80] Under Article 242a of the VAT Directive, where a platform facilitates the supply of goods or services (including accommodation services) to a non-taxable person within the EU, it is required to keep records of those transactions and make them available electronically to the Member States concerned upon their request.
[81] Juan Manuel Vázquez, 'Airbnb (C-83/21). Compatibility of the Italian Tax Regime for Short-Term Property Rentals with EU Law' (*Kluwer International Tax Blog*, 3 May 2023) 21 <www.kluwertaxblog.com> accessed 7 August 2023.
[82] OECD, *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration* (n 3) 73–74.
[83] In the literature, it is indicated that national systems of liability can generally be divided into three models: the Austrian model, the British model, and the German model: Anne Janssen, 'The Problematic Combination of EU Harmonized and Domestic Legislation Regarding VAT Platform Liability' (2021) 32 International VAT Monitor 234–236.

platforms, the underlying supplier ultimately remains liable to the tax authorities to account for the VAT on its supplies[84].

It is important to note that involving third parties to enhance tax collection efforts is a standard method integrated into the tax system for collection purposes[85]. Imposing the obligation to pay tax on an entity other than the taxable person aims to enhance the likelihood of actual tax collection[86]. For example, when the obligation to pay transaction tax is imposed on intermediaries involved in the transaction, such as digital platforms, tax compliance may increase because intermediaries tend to be fewer in number and thus easier to monitor than their clients, especially if the latter are end consumers[87]. Additionally, targeting legal enforcement efforts towards a concentrated group of larger and wealthier actors is a much simpler task than monitoring a dispersed group of low-income individuals[88].

However, it is important to emphasize that while the participation of third parties does not represent a penalty or any type of sanction, it frequently involves these entities being held accountable for violating of an increasing number of formal obligations, including the filing of returns and the reporting of data[89]. The third parties could essentially even be seen as entities that play the role of unpaid tax collectors and while they assist governments in collecting significant tax revenue, they could also incur substantial costs[90]. For this reason, a mechanism involving third-party liability should be proportionate to the purpose it serves[91].

The possibility of imposing liability on third parties under VAT finds confirmation in the case law of the CJEU[92].

Additionally, this approach aligns with the fundamental structure of VAT. In the context of this tax, the individuals who bear the economic burden of the tax are not the same entities that ultimately

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[84] OECD, *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration* (n 3) 83–84.

[85] Philip Baker, Pasquale Pistone and Katerina Perroun, 'Third-Party Liability for the Payment of Taxes and Their Fundamental Rights' [2023] World Tax Journal 86.

[86] ibid 87. Of course, this is an assumption. The enhancement of the likelihood of actual tax collection will depend on whether the entity other than the taxable person has the necessary tools and resources to effectively fulfill the tax obligations.

[87] G. Beretta, *European VAT and the Sharing Economy,* S.l.: Kluwer Law International, B.V, 2019, p. 273–275.

[88] M. Viswanathan, 'Tax Compliance and the Sharing Economy', in: *The Cambridge Handbook of the Law of the Sharing Economy*, ed. N. M. Davidson, M. Finck, J. J. Infranca, Cambridge University Press, 2018, p. 362.

[89] Baker, Pistone and Perroun (n 86) 86.

[90] Aleksandra Bal, 'Platform Economy: Will The Real Tax Collector Please Stand Up?' (*Forbes*) <https://www.forbes.com/sites/aleksandrabal/2023/03/15/platform-economy-will-the-real-tax-collector-please-stand-up/> accessed 4 April 2023.

[91] Baker, Pistone and Perroun (n 86) 87.

[92] In the Italmoda case the CJEU ruled that imposing certain responsibility on third parties in the fight against VAT fraud is permissible. The Court found that liability for VAT fraud may arise in the absence of national provisions foreseeing it, which essentially transformed third-party liability for VAT fraud from a rule into a principle. *Staatssecretaris van Financiën v Schoenimport 'Italmoda' Mariano Previti vof and Turbu.com BV and Turbu.com Mobile Phone's BV v Staatssecretaris van Financiën* [2014] CJEU C-131/13; As rightly pointed out in doctrine, this has significant theoretical and practical implications: the scope of the new principle of third-party liability for ci fraud, as developed by the Court, appears to apply to any type of fraud and to extend to the potential creation of VAT obligations to any party within the production chain, including intermediaries such as warehouse owners or online retail platforms. Rita de la Feria, 'Tax Fraud and Selective Law Enforcement' (2020) 47 Journal of Law and Society 261.

settle the tax. The basic structure of VAT is designed such that although the consumer bears the economic burden of the tax, VAT is accounted for and paid by the entrepreneur (taxable person), who acts as the "intermediary" between the consumer and the State. This structural design is logical because it is impractical to impose VAT compliance obligations on numerous individual consumers. Instead, these obligations are placed on fewer, but better-prepared taxable persons - businesses engaged in VAT-taxable activities.

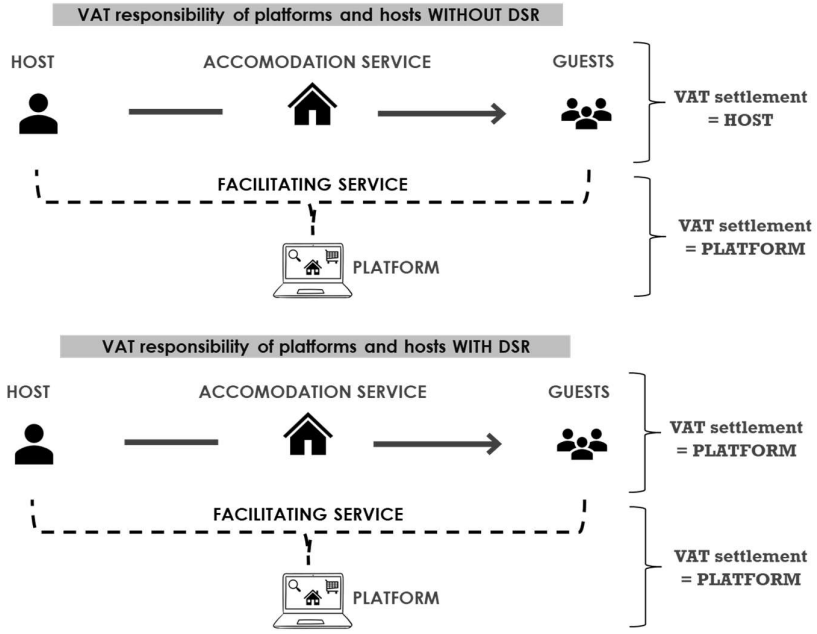
This same structure and logic are now being applied to transactions facilitated by platforms. It is becoming increasingly common to see digital platforms changing their role in the transaction chain for VAT purposes, such that platforms are obligated to account for VAT, in a sense, "on behalf of" other VAT taxable persons (underlying suppliers). This serves to further consolidate the number of entities responsible for VAT settlement. This phenomenon, illustrated by the DSR, is discussed below.

4. Comparative Analysis of Deemed Supplier Regimes

To engage platforms in VAT collection, the EU legislator decided to introduce the DSR into the EU VAT system.

The DSR is the most far-reaching legislative solution imposing liability on the digital platform for the VAT collection. This solution introducing a mechanism into the VAT system where a platform in certain circumstances, be deemed fully liable for accounting for VAT on the underlying transaction. The platform is changing its role in the transaction chain for VAT purposes and will, in a sense, "step into" the tax role of the underlying supplier.

Figure 1. Liability for the accounting for VAT on STR transactions concluded via platforms without and with DSR.



Source: own compilation

4.1. Models of Deemed Supplier Regime for Platforms in EU VAT System

The first DSR regime dedicated for digital platforms[93] was introduced in 2015 and basically covered platforms taking part in the supply of electronic services. This DSR will hereafter be referred to as the digital model. In 2021, another regime of this kind was introduced for digital platforms facilitating some e-commerce transactions. This DSR will be referred to as the e-commerce model. Currently, the EC is planning to introduce another DSR for platforms facilitating the supply some tangible services (accommodation and passenger transport), which is expected to come into effect in July 2027. This DSR will be referred to as the service model[94].

4.1.1. Digital Model of DSR

The main principles behind the digital model are regulated in Article 9a of the IR. According to this provision, where electronically supplied services or internet telephone services (telephone services provided over the Internet) are supplied through a telecommunications network, interface or portal, it is presumed for the purposes of applying Article 28 of the VAT Directive that the taxable person involved in the supply of those services is acting in his own name but on behalf of the supplier of those services, unless the taxable person explicitly designates that supplier as the person supplying the service and this is reflected in the contractual arrangements between the parties. The provision of Article 9a of the IR therefore introduces a rebuttable presumption that in certain situations the tax liability will rest with the intermediary.

It should be noted that due to the broadly formulated criteria, one has to agree with the widely held view that it is not easy, if not impossible, for intermediaries to rebut the presumption of Article 9a of the IR. Consequently, it is hardly surprising that this presumption is very rarely rebutted in practice by platforms[95]. Therefore, legal scholarship emphasizes that instead of looking to avoid this presumption, it would be wiser to accept that the role of platforms in VAT collection is becoming increasingly important and that this responsibility will be extended to more and more activities[96].

The operation mechanism of the digital model under DSR functions as follows: if the conditions for the application of Article 9a of the IR are fulfilled, a legal fiction is established where two identical services are deemed to have been provided consecutively. Initially, the platform is regarded as having received an electronic or telephone service provided via the internet from

[93] A certain type of DSR is the institution of an undisclosed agent included in Article 28 of the VAT Directive, discussed above. However, this solution was certainly not designed for digital platforms, and for this reason, doubts arise as to whether and when they can be considered an undisclosed agent.
[94] Such terminology is used, for example by: E. T. Sroka, 'Comparing Deemed Supplier Regimes: E-Commerce and Short-Term Rental/Passenger Transport Platforms in the EU VAT System', *The Lisbon International & European Tax Law Seminars, CIDEEFF - Centre for Research in European, Economic, Fiscal and Tax Law.*, no. 9 (2024).
[95] European Commission. Directorate General for Taxation and Customs Union and Deloitte, *VAT Aspects of Cross-Border e-Commerce: Options for Modernisation: Final Report. Lot 3, Assessment of the Implementation of the 2015 Place of Supply Rules and the Mini-One Stop Shop* (Publications Office 2016) 131.
[96] Fernando Matesanz, 'What Does the Fenix Case Mean for VAT Management?' (*ITR*, 14 March 2023) <www.internationaltaxreview.com> accessed 23 March 2023.

the actual supplier. This initial transaction typically constitutes a B2B transaction[97]. In the second step, the platform is considered to have supplied an "acquired" service to the end customer. Since the service provided by the platform, acting as an undisclosed agent, should be treated as integrated with the commissioned service, the platform will charge VAT on the total price of the service, not just on the agreed fee or commission for the intermediary service.

The digital model of the DSR was introduced to clarify who is the supplier for VAT purposes where electronically supplied services, or telephone services provided through the internet, are supplied to a customer through platforms[98].

While non-binding guidelines from the VAT Committee existed in this regard[99], it was doubtful in practice under what circumstances intermediary platforms facilitating service provision could be considered suppliers under Article 28 of the VAT Directive. The presumption outlined in Article 9a of the IR addressed these uncertainties. However, the legislative maneuver of "clarifying" Article 28 of the VAT Directive within the IR instead of creating a new dedicated regulatory framework for platforms should be viewed unfavourably. It is worth bearing in mind that the relationship between Article 28 of the VAT Directive and Article 9a of the IR is so unclear that it has been the subject of proceedings before the CJEU[100]. Finally, the Court ruled that the provisions of Article 9a of the IR is valid, however, it should be stressed that this ruling is controversial. It can be argued convincingly that Article 9a of the IR exceeds the scope of the VAT Directive by introducing irrebuttable presumptions, which essentially constitute new rules, and that Article 9a of the IR diverges from the traditional concept of a commissionaire as understood in international law and the civil law traditions of the Member States[101].

When evaluating the digital model of the DSR, it is important to recognize that Article 9a of the IR has generally enhanced legal certainty for entrepreneurs[102]. Additionally, from the EC's perspective, this type of collection model using platforms for VAT accounting considerably simplifies the administrative burden for the underlying suppliers, especially smaller companies[103]. This presumption appears to encourage smaller operators to carry out their business activities through

[97] European Commission. Directorate General for Taxation and Customs Union and Deloitte (n 96) 72–73.
[98] 'Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 Amending Implementing Regulation (EU) No 282/2011 as Regards the Place of Supply of Services', Pub. L. No. OJ L 284, 26.10.2013, p. 1–9.
[99] It is worth noting that even before the implementation of Article 9a IR, the VAT Committee almost unanimously agreed that the service shall be deemed to have been supplied to the final consumer by: (a) the intermediary where, in supplying the electronic service, he acts in his own name but on behalf of the electronic service provider, as provided for under Article 28 of the VAT Directive; (b) the electronic service provider where, in supplying the electronic service, the intermediary acts in the name and on behalf of the electronic service provider; (c) the third party intervening in the supply where, in supplying the electronic service, the third party acts in his own name and on his own behalf. The Committee also indicated that in providing the electronic service to the final consumer the intermediary or the third party intervening in the supply shall be presumed to have acted in their own name unless, in relation to the final consumer, the electronic service provider is explicitly indicated as the supplier of the electronic service. European Commission, 'VAT Committee Guidelines Resulting from the 93rd Meeting of 1 July 2011: Electronic Services Supplied by Service Providers Using the Network of Telecommunications Provider, Taxud.c.1(2012)1410604 – 709'.
[100] *Fenix International* (n 69).
[101] Oskar Henkow, 'Acting in One's Own Name on Someone Else's Behalf: A Changing Concept?' in Karina Kim Egholm Elgaard (ed), *Momsloven 50 år* (Første udgave, første oplag, Ex Tuto Publishing 2017) 251–254.
[102] Amand (n 64) 242–243.
[103] European Commission. Directorate General for Taxation and Customs Union and Deloitte (n 96) 11.

platforms. Platforms, especially the larger ones, are also often much better equipped to handle a large number of clients, to determine the location of the customers, and to comply with relevant VAT rules, having usually set up powerful automated processes[104]. Therefore, the presumption established in Article 9a of the IR does not appear to place a disproportionate burden on platforms, since it reflects their business models and often the existing VAT accounting practice[105].

4.1.2. E-commerce Model of DSR

The main principles behind the e-commerce model are regulated in Article 14a of the VAT Directive. According to the first paragraph of this provision, if a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or similar means, the distance sale of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150, that taxable person is deemed to have received and supplied those goods himself. The second paragraph states, in turn, that where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or similar means, the supply of goods within the Community by a taxable person not established in the Community to a non-taxable person, the taxable person who facilitates that supply is deemed to have received and supplied those goods himself.

Unlike the digital model of DSR, the e-commerce model does not establish a presumption which, upon meeting certain conditions, constitutes a legal fiction; instead, it directly constitutes a legal fiction. Under the DSR, when applied, the platform facilitating the supply is deemed to have both received and delivered the goods supplied itself. This creates a fictional scenario of two consecutive supplies of goods: one between the actual supplier and the platform, and the other between the platform and the end consumer. However, it's important to note that this fiction is limited solely to VAT liabilities and does not extend to other aspects of the platforms' liabilities, such as product liability.

The first transaction, from the underlying supplier to the platform, is considered a B2B supply, which is treated as a supply without transport (Article 36b of the VAT Directive)[106]. This B2B supply is either outside the scope of VAT or exempt from VAT, with the right of deduction vested in the underlying supplier as per Articles 136a and 169(b) of the VAT Directive. The second transaction (from the platform to the consumer) is considered a B2C supply, to which transport is assigned – taxation will take place in the country of the recipient.

It should be noted that in many respects, the mechanics of the e-commerce model are similar to those of the digital model. In both cases, there is a legal fiction of two identical consecutive supplies, and a liability is placed on the platform to account for VAT from the transaction to the end consumer. However, the structure adopted in the e-commerce model is significantly more elaborate.

[104] ibid 72–73.
[105] ibid 203–204.
[106] It is worth noting that without this additional provision (added to the VAT e-commerce package in 2019), transactions involving transport would have to be determined based on existing CJEU case law, and in many cases, this would undermine the intended results of Article 14a of the VAT Directive. Marta Papis-Almansa, 'VAT and Electronic Commerce: The New Rules as a Means for Simplification, Combatting Fraud and Creating a More Level Playing Field?' (2019) 20 ERA Forum 219–220.

It includes numerous specific provisions relating, among other things, to the limitation of platform liability through safe harbour rules, the definition of the concept of 'facilitation', the timing of the tax liability's occurrence, etc[107].

The e-commerce model of DSR was implemented to ensure the effective and efficient collection of VAT. In EU a major share of distance sales of goods, both supplied from one Member State to another and from third territories or third countries to the Community, are facilitated through platforms and it was considered necessary to involve such entities in the VAT collection process[108]. It is worth noting that historically, imports of goods of negligible value were either exempt from VAT or subject to very low tax rates in many countries. Such an arrangement was introduced when the level of imports benefiting from tax breaks was relatively low[109]. However, in recent years, there has been a substantial and rapid increase in the volume of low-value imports of physical goods facilitated through platforms[110]. This has resulted not only in decreased VAT revenues but also in increasing unfair competitive pressure on domestic retailers[111].

It appears that the rules intended to level the playing field for both EU and non-EU vendors have shaped the transactions covered by the e-commerce model of DSR, particularly concerning third countries. For distance sales of goods (DSIGs) with a value not exceeding EUR 150, the goods must be imported into the Community from third countries. Additionally, for EU supplies, the underlying supplier should be established in a third country. Moreover, it should be noted that if platforms were not responsible for enforcing EU VAT rules against non-EU underlying suppliers, then the responsibility for prosecuting unreliable suppliers would fall on Member States, which seems is not effective.

It is worth noting that Article 14a of the VAT Directive was not foreseen in the Commission's original 2016 legislative proposal[112]. It was added at the initiative of the European Parliament during the work on this proposal in the Council of the EU[113]. The appearance of the proposal to introduce the DSR as late as at the stage of the EU Council's work means that no analysis had been carried out on the possible impact of this solution on the platform sector (the Commission prepares an impact assessment of the planned regulation only for the original legislative proposals). This way of conducting the legislative procedure for Article 14a of the VAT Directive seems to generate the risk that this provision may one day be challenged by taxable persons before the CJEU, as

[107] Articles 31–33, 36b, 66a, 136a, 169, 205, 219a–221, 242, 242a of the VAT Directive and articles 5b, 5c, 5d, 41a, 54b, 54c, 63c of the IR.
[108] Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods [OJ L 348, 29.12.2017, pp. 7–22].
[109] Papis-Almansa (n 107) 216–217.
[110] The data suggests that the majority of packages entering borders from online trade consist of low-value goods, posing significant logistical challenges for customs authorities. Parcel volume surged from 44 billion in 2014 to 65 billion in 2016 across 13 major markets and is projected to continue growing at a rate of 17-28% annually between 2017 and 2021. OECD, *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales* (n 73) 31–32.
[111] OECD (ed), *Addressing the Tax Challenges of the Digital Economy: Action 1: 2015 Final Report* (OECD 2015) 120–121.
[112] Aleksandra Bal, 'Managing EU VAT Risks for Platform Business Models' (2018) 72 Bulletin for International Taxation <ibfd.org> accessed 4 February 2021.
[113] Sergio Messina, 'VAT E-Commerce Package: Customs Bugs in the System?' (2021) 13 World Tax Journal 122–123; Pollak (n 57) 109.

happened in the Fenix case[114]. However, the grounds would be different – in this case it is questionable whether a provision, imposing specific obligations on platforms, could have been introduced at such a late legislative stage and without an assessment of its compliance with the principles of subsidiarity and proportionality.

As the EC points out in its first preliminary assessment of the validity of the e-commerce VAT package, the reform bolsters compliance with VAT rules as it streamlines the VAT obligations of thousands of underlying sellers[115]. In the EC's view, these statistics highlight the positive impact that the DSR has had on compliance. However, it should be noted that the VAT e-commerce reform consisted of a number of measures, one of which was the DSR, so it is difficult to assess what effect this one particular element of the larger reform has had. It is worth noting that in Australia, despite initial concerns[116], large international suppliers of digital services and products have expressed a willingness to comply with the GST rules which require platforms to register and bear tax liability for intangible supplies and imports of low-value goods. There is also no evidence that offshore platforms have left the Australian market due to their new obligations[117]. This is also a good signal for the EU market.

4.1.3. Service Model of DSR

The "VAT in the Digital Age" (ViDA) proposal put forward by the EC on December 8, 2022, aims to modernize the VAT Directive, among other things, by introducing updated VAT rules for platform sellers operating in the passenger transport and STR sectors[118]. The planned changes are set to be implemented from July 1, 2028 (voluntary application by Member States), with mandatory application across all Member States by January 1, 2030[119].

The main principles behind the service model are regulated in the proposed Article 28a of the VAT Directive. According to this provision, a taxable person who facilitates, through the use of an electronic interface such as a marketplace, platform, portal, or similar means, the supply, within the Union, of STR services, namely the uninterrupted rental of accommodation to the same person for a maximum of 30 nights, shall be deemed to have received and supplied those services themselves unless the person providing those services has: a) provided to the taxable person

[114] *Fenix International* (n 69).
[115] Annex No. 6 'E-commerce evaluation' to: European Commission, 'Impact Assessment Report, SWD(2022) 393 Final' (n 55).
[116] In their submissions to the Australian Senate Economics Legislation Committee, platforms such as eBay, Alibaba, and Etsy expressed concern that they would be held responsible for GST on goods they never owned or tracked, suggesting that the introduced system would be complex and costly to administer, and it is likely that its costs will be passed on to consumers. Evgeny Guglyuvatyy and Nikolai Milogolov, 'GST Treatment of Electronic Commerce: Comparing the Singaporean and Australian Approaches' (2021) 19 eJournal of Tax Research 41.
[117] ibid 33.
[118] VIDA consists of drafts of three pieces of legislation introducing amendments to the EU VAT system: Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age (n 63); Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes [COM/2022/704 final]; Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age [COM/2022/703 final].
[119] Draft Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age - compromise text 5 November 2024 (n 63).

facilitating the supply their VAT identification number for VAT purposes issued in the Member States where the supply takes place, or the identification number allocated to them in accordance with Article 362 or Article 369d of the VAT directive, and b) declared to the taxable person facilitating the supply that he will charge any VAT due on that supply[120].

The above means that when the underlying supplier (host offering an apartment for rent) does not charge VAT, the digital platform will charge this tax to the consumer and will account for this tax. The digital platforms will be deemed to be the supplier and obliged to collect VAT on the supplies they facilitate. Therefore, this solution will not simultaneously impose a burden on the listed underlying suppliers, as they will still not be required to register and account for VAT themselves (of course, for the purposes of this regulation only).

It should be noted that in contrast to the digital model, the provision imposing liability on platforms is found in the proposal for the VAT Directive (Article 28a) and not in the proposal for the IR (only further elements on the practical application of this measure are found in this regulation). Given doubts about the validity of this type of legislative exercise raised in the Fenix case[121], it must be considered that the imposition of the DSR on platforms in the new provision in the VAT Directive was a far better solution. The structure of the service model therefore resembles the structure of the e-commerce model more than the digital model – the provision imposing liability on platforms is in a new provision in the proposal amending the VAT Directive, and a number of technical adjustments and clarifications in the proposal for the IR. However, unlike for the e-commerce model, the provision imposing the DSR on STR platforms is included in the ViDA package from the outset and is accompanied by a detailed regulatory impact assessment.

Paradoxically, although both the digital and service models refer to platforms that facilitate the supply of services, electronic and STR services respectively, there is a much greater similarity in terms of regulatory structure between the service model and the e-commerce model which includes platforms that facilitate the delivery of goods.

What is very distinctive about the service model comparing to e-commerce model is the type of underlying transactions it covers. These can be referred to, in simple terms, as C2C and C2B transactions or, more precisely, transactions from entities that do not charge VAT to underlying buyers who have or do not have the status of VAT taxable persons.

It is worth highlighting that the type of transactions covered by the service model raises concerns regarding the fiscal neutrality and equality of the proposed solutions. Specifically, the principle of tax neutrality, which dictates that similar economic activities should be treated equally for VAT purposes, may be compromised[122]. If the underlying supplier does not use the intermediation of the platform, the STR services it supplies will not be subject to VAT, as is currently the case. Thus,

[120] The draft of Article 28a of the VAT Directive as given in the compromise text. Draft Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age - compromise text 7 November2024 (n 63).
[121] *Fenix International* (n 69).
[122] The CJEU describes fiscal neutrality as the principle under which economic operators carrying out the same transactions may not be treated differently in relation to the levying of VAT (*Cimber Air A/S v Skatteministeriet* [2004] CJEU C-382/02, para 24).

the DSR as proposed will result in the supply of the same services by the same suppliers being treated differently simply because of their choice of intermediation channel. The intermediation offered by the platform will imply taxation with VAT, whereas the use of traditional intermediation channels will exclude this taxation (leading to inequality). This may affect the underlying supplier's preference for the intermediation channel (lack of neutrality). It should be noted that while the digital model and the e-commerce model were seen to somewhat encourage smaller operators to do business through platforms, as they took on the burden of accounting for VAT for them[123], the mechanics of the service model under the DSR appear to rather discourage this.

In terms of its mechanics, the proposed service model replicates the solutions proposed in the e-commerce model[124]. This means that the fiction of two consecutive services will be created, one between the actual supplier (host) and the platform and the other between the platform and the end consumer. This fiction will be limited to VAT liabilities only.

The first transaction (from the underlying supplier to the platform), under the proposed Article 136b of the VAT Directive, will be exempt from VAT, but unlike the e-commerce model, without the right to deduct. Such an arrangement, however, requires the underlying supplier to raise the price requested for providing the service, without the option to deduct VAT that traditional suppliers have, and with this it is more than likely that the competitive advantage over traditional sectors will not disappear but may be reversed[125]. Furthermore, the impossibility to deduct VAT that the individual underlying supplier has paid on its inputs leads to VAT cascading. Such risks are pointed out, among others, by business representatives[126]. The academic legal writers point to various possible strategies for removing the amounts of undeducted VAT and thus avoiding its cascading[127], but the EU legislator has not chosen to introduce any of these solutions. This new rule instead of contributing to an equal treatment between traditional and platform-based providers, introduce a discriminatory treatment of these suppliers using platforms' intermediation who potentially compete with traditional businesses – that approach seems alien to the purpose and logic of VAT[128].

[123] According to the data, trading through platforms is widely adopted by small businesses, which, despite the costs of using such platforms, believe that the burden of independently determining the place of supply and compliance (e.g., through MOSS) is even greater for them. European Commission. Directorate General for Taxation and Customs Union and Deloitte (n 96) 89.

[124] Fernando Matesanz, 'IVA La Vida. Primera Parte. IVA y Economía Colaborativa' <https://www.legaltoday.com/opinion/blogs/fiscal-y-legal/blog-sobre-tributacion-indirecta/iva-la-vida-primera-parte-iva-y-economia-colaborativa-2023-01-02/> accessed 23 March 2023.

[125] Javier Sanchez Gallardo and Gorka Echevarría, 'The Platform Economy Will Have Its Own VAT Regime in 2025' (2023) 34 International VAT Monitor <ibfd.org> accessed 7 August 2023.

[126] Bolt and others, 'Letter to the Swedish Presidency Dated May 31, 2023: Urgent Need to Review the EU's Proposed VAT Platform Rules'; BusinessEurope, 'VAT in the Digital Age – BusinessEurope Reply to the Public Consultation' <https://www.businesseurope.eu/publications/vat-digital-age-businesseurope-reply-public-consultation> accessed 9 May 2023; European Travel Agents' and Tour Operators' Association, 'Feedback on the ViDA Regulation Proposal 4.04.2023'.

[127] For instance (i) the underlying transaction can be zero-rated, (ii) a reduced rate can be introduced for output transactions made by platforms, (iii) a flat-rate input VAT compensation scheme can be enacted. Beretta (n 66) 314.

[128] Marta Papis-Almansa and Emilia Teresa Sroka, 'Questioning the Proportionality of the ViDA Rules on the Platform Economy: Are We Veering Off Course?' (2024) 35 International VAT Monitor.

The main goal of the service model is to address the challenges of platform economies by ensuring equal treatment of digital and offline STR and passenger transport sectors[129]. It should be noted that supplies made by such small underlying suppliers through the platform are often not subject to VAT. In the case of the STR market, property owners operating on a small-scale basis are likely not required to collect VAT, taking advantage of the SME exemption[130]. In the past, this competitive advantage was minimal due to the limited reach and resources of small suppliers and had no effect on market competition with VAT-registered businesses (such as hotels). However, platforms, through economies of scale and network effects, have introduced new business models that are changing this situation, enabling small suppliers to directly compete with traditional VAT-registered businesses[131]. The benefits to the individual supplier of using the technological, commercial and legal infrastructure provided by the platform therefore put it in a comparable position to a traditional business, but unlike a traditional business, it is not usually liable to pay VAT.

At this stage, it is difficult to anticipate whether the implementation of the new DSR into the EU VAT system will have the desired effect. There are doubts as to whether the proposed solution will prevent distortions of competition in the STR market. First, it should be noted that VAT is not the only legal factor determining a competitive advantage for hosts operating through platforms. Second, the unambiguously negative impact of the platform economy on the traditional hotel industry is not a foregone conclusion. Evidence from some case studies suggests that C2C accommodation offers do not have a negative impact on traditional operators. Thus, they do not deter travellers from booking hotels, indicating that the two offers are complementary[132].

Moreover, considering the course of negotiations by the Member States in the Council, it is evident that some Member States are interested in keeping SMEs outside of the scope of the deeming supplier rule, thus continuing exemption from VAT services provided by such suppliers[133]. It should be noted that this solution is likely to undermine the very purpose of introducing the DSR, which is to level the playing field between traditional businesses and entities operating through platforms – the fragmented application of the DSR cannot remedy the alleged distortions of

[129] Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age (n 63).
[130] The VAT Directive outlines a special procedure for small enterprises, permitting Member States to grant VAT exemptions to taxable persons whose annual turnover falls below a specific threshold (Articles 281-294 of the VAT Directive). The rationale for the exemption for small enterprises is that the administrative costs of compliance of such taxable persons are high in relation to the potential benefits. Liam Ebril, Michael Keen and Victoria Perry, *The Modern VAT* (International Monetary Fund 2001) 90; It is also pointed out that the primary purpose of a registration threshold is to reduce administrative and compliance costs; study after study shows that the administrative costs incurred by tax authorities to apply the VAT to small businesses and the compliance costs incurred by small businesses are disproportionate to the revenue that these enterprises generate: Yige Zu, 'VAT/GST Thresholds and Small Businesses: Where To Draw the Line?' (2018) 66 Canadian Tax Journal 311.
[131] European Commission, 'Impact Assessment Report, SWD(2022) 393 Final' (n 55).
[132] European Commission. Directorate General for Internal Market, Industry, Entrepreneurship and SMEs, VVA, and Spark Legal Network (n 4) 41–43.
[133] Draft Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age - compromise text 8 May 2024 (n 63). Finally, in the compromise text accepted by ECOFIN, it was decided that Member States may exclude supplies of STR services made within their territory under the special scheme for small enterprises from the DSR solution: Draft Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age - compromise text 5 November 2024 (n 63).

competition[134]. Given these doubts, the introduction of the service model of DSR may prove controversial.

4.2. Evaluating the Deemed Supplier Regime: Advantages and Disadvantages

The introduction of DSR could bring many benefits, especially from the perspective of tax administration. Firstly, this solution, by changing the role of the platform in the transaction chain for VAT purposes, in a sense "transfers" the responsibility for tax accounting and collection from numerous, typically small entities (the underlying suppliers) to a smaller number of generally much larger entities (the platforms facilitating transactions). This shift makes it simpler for tax authorities to monitor and enforce the accurate accounting of underlying transactions. Investigating fewer, larger platforms appears to be less burdensome than auditing numerous small underlying suppliers[135]. Furthermore, it seems that digital platforms have a greater ability to make appropriate tax decisions and correctly account for transactions than a wide range of, usually small, traders[136].

Shifting the liability for tax accounting to platforms thus also reduces the tax compliance burden on the underlying suppliers. This is because suppliers do not have to deal with charging the correct amount of VAT to the customer and remitting it to the tax office[137].

The service model of DSR indirectly addresses issues associated with the growth of platform economies in the STR sector, as described in point 3.1. This model ensures that hosts operating through platforms, regardless of whether they are considered taxable persons or not, will be subject to VAT. Consequently, this should eliminate any competitive advantage they may have over traditional, VAT-registered entrepreneurs. Furthermore, if we assume that Article 28a of the VAT Directive will function in a similar manner to Article 28[138], the service of intermediation provided by the platform would "disappear" for VAT purposes as it becomes integrated with the underlying service. This indirectly resolves the issue related to the nature of services facilitated by STR platforms. Additionally, one could argue that since the EU legislator opted for the adoption of the DSR dedicated to STR platforms, this implies (implicitly) that they should not be treated as undisclosed agents under Article 28 of the VAT Directive. If STR platforms were already deemed as suppliers under Article 28 of the VAT Directive, the introduction of the planned Article 28a of the VAT Directive would be unnecessary.

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[134] Papis-Almansa and Sroka (n 127).

[135] By placing the burden of tax accounting on platforms that have 'more to lose' than individual hosts, tax administrations increase the likelihood of tax compliance of these transactions. M. Viswanathan*, 'Tax Compliance and the Sharing Economy', in: The Cambridge Handbook of the Law of the Sharing Economy*, ed. J.J. Infranca, M. Finck, N.M. Davidson, Cambridge Law Handbooks, Cambridge University Press, Cambridge 2018), p. 363–364.

[136] *Mechanisms for the Effective Collection of VAT/GST,* OECD, Paris 2017, p. 26–27.

[137] M. Merkx, 'Platform Liability: An Efficient and Fair Collection Model for VAT?', in: *VAT Challenges and Opportunities in the New Digital Economy*, ed. Ch. Amand et al. (Madrid VAT Forum Foundation, 2022), p. 15.

[138] It is worth to notice that according to the legal doctrine the wording of proposed article 46a of the VAT Directive suggest that the facilitation service by the platform exists in addition to the deemed supply of the accommodation services. This, however, does not clearly stem from the wording of article 28a of the VAT Directive, the disposition of which almost literally copies article 28 of the VAT Directive. Based on arguments of coherence of the system, the authors submit that article 28a of the VAT Directive should be interpreted as resulting in the same legal consequences as article 28 of the VAT Directive. Papis-Almansa and Sroka (n 127).

However, it should be noted that although DSR is generally considered a proportionate solution, there are doubts about the potential negative effects of placing the responsibility for VAT collection on platforms instead of individual suppliers.

Firstly, implementing DSR could result in additional administrative burdens and compliance difficulties for platforms. To introduce the DSR into the tax system, platforms must have the ability to exert a certain level of influence and control over the underlying transaction. If they lack access to information about underlying transactions or if obtaining it would require radical changes to their business model, then the liability for VAT collection should not be shifted to them[139]. Additionally, for many platforms, adopting DSR would necessitate significant IT system changes to ensure the efficiency of the new regulations[140]. It is rightly pointed out that with DSR, platform operators could even be seen as entities that play the role of unpaid tax collectors[141]. While they assist governments in collecting significant tax revenue, they also incur substantial costs[142]. Therefore, when introducing DSR, the financial capability of platforms to collect VAT on such transactions should also be taken into account.

Secondly, if the cost of compliance associated with the DSR regime is considered high, smaller platforms may struggle to meet their obligations[143]. As noted in the literature, increasing complexity tends to favour larger entrepreneurs. Small or new operators in the market may choose not to start an online business, terminate it, or operate in the grey zone due to the complexity of compliance[144].

This measure thus disadvantages smaller platforms and new market entrants, potentially strengthening platform monopolies. Larger platforms are better equipped to handle the complexity and regulatory burden, while smaller intermediaries may be driven out of the market. This could have a detrimental effect on market competitiveness.

4.3. Recommendations and Future Directions

Based on the above analysis, a concept worth considering is the introduction of a threshold below which platforms would not be deemed suppliers or the regime would be optional for them[145]. At present, such a solution is not envisaged by any of the DSR models. Platforms are therefore deemed as a supplier regardless of their size, the business model adopted or the number of underlying transactions they facilitate and their value.

This solution undoubtedly has its good points. Introducing a threshold for the DSR would add another level of complexity. Legal literature highlights that the lack of simplicity invites tax

[139] G. Beretta, *European VAT …*, p. 298–301.
[140] *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales,* OECD, 2019, p. 36–37.
[141] A. Bal, 'Platform Economy: Will The Real Tax Collector Please Stand Up?', Forbes, accessed 4 April 2023, https://www.forbes.com/sites/aleksandrabal/2023/03/15/platform-economy-will-the-real-tax-collector-please-stand-up/.
[142] ibid.
[143] As indicated by the OECD, not all platforms that meet the deemed supplier criteria will be able to meet the requirements imposed by this regime, particularly start-up businesses and small platforms. *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration,* OECD, 2021, p. 77–79.
[144] R. Barr et al., *E-Commerce and EU VAT: Theory and Practice* Wolters Kluwer International, 2021), p. 2.
[145] See also: Sroka (n 95).

evasion[146]. It is challenging to allow exemptions for smaller marketplaces as this could lead to challenges of VAT evasion − operators wishing to evade tax burdens may then migrate to smaller platforms to exploit tax differences[147].

However, as rightly pointed in the doctrine, assuming that all platforms would be able, without much difficulty, to fulfil a key role in collecting VAT reflects a lack of understanding of the platforms' business models in all their complexity[148]. It should be stressed that, platforms have a natural tendency to create monopolies - the first platforms in a given sector become strong market leaders, which is due to the fact that sellers and buyers prefer to use the platforms with the largest number of users, as this means more opportunities to transact. It is therefore difficult for smaller platforms to become a potential competitor to dominant platforms. Although the DSR is generally a proportionate solution, there are doubts about this for smaller platforms and for platforms that are just starting out, due to the particularly high increase in administrative burdens and costs for these players[149]. This is undesirable from a competition policy and antitrust law perspective[150] and, in the long term, may limit innovation in the EU internal market[151].

A solution that can be implemented to redress the balance is to adopt a provision that would reduce or eliminate the liability of certain platforms. To this end, a rule could be introduced whereby a platform whose annual turnover remains below a certain threshold would not be required to collect and remit VAT on the underlying transaction[152]. In setting a threshold for accommodation sector platforms, the EU legislator could follow either this solution or the solutions contained in the legislative proposal amending the Regulation of the European Parliament and of the Council on data collection and sharing relating to short-term accommodation rental services[153]. As indicated in the doctrine, a sensible approach would be also to periodically review and adjust the threshold to balance changes in the real value of money and changes in administrative and compliance costs[154].

It seems that excluding small and medium-sized platform operators from the scope of the DSR, or making the DSR optional for them, is particularly relevant for STR platforms. It is pointed out that, unlike the e-commerce market, the service platform economy is not as dominated by big market

[146] James A Mirrlees, 'The Economic Approach to Tax Design' in James A Mirrlees, Stuart Adam and Institute for Fiscal Studies (Great Britain) (eds), *Tax by design: the Mirrlees review* (Oxford University Press 2011) 42.
[147] Richard Asquith, 'Co-Opting Gig & Sharing Platforms as Tax Collectors' (25 October 2021) <https://www.vatcalc.com/global/co-opting-gig-sharing-platforms-as-tax-collectors/> accessed 28 November 2022. However, it seems that currently such risk does not appear to be too significant. This is due to the nature of the platform economy, where the largest platforms provide access to huge user bases, established reputation systems, often purchase guarantees, and other amenities that are challenging for smaller platforms to compete with.
[148] Lamensch and others (n 15) 477–479.
[149] Pollak (n 57) 317. While these remarks pertained to the e-commerce model, they appear to be equally relevant for all deemed supplier regime models.
[150] Simon Thang and Nicolas Shatalow, 'Digital Cross-Border Supplies' in Robert F van Brederode, *Virtues and Fallacies of VAT* (Wolters Kluwer Law International 2021) 438–439.
[151] European Commission, 'VAT Expert Group No 095: VAT Treatment of the Sharing Economy, Taxud.c.1(2020)5816454' (n 68).
[152] Beretta (n 66) 298–301.
[153] Proposal for a regulation of the European Parliament and of the Council on data collection and sharing relating to short-term accommodation rental services and amending Regulation (EU) 2018/1724 [COM(2022) 571 final].
[154] Zu (n 129) 317.

players, therefore the efficiency that can be achieved by taxing a few big platforms instead of numerous small suppliers is achieved to a lesser extent[155]. For this reason, it seems a good solution would be to exclude such platforms from the DSR, at least temporarily, during the initial phase of the functioning of the new regulations[156].

5. Conclusions

The DSR offers a promising solution to the VAT challenges posed by STR platforms. By changing the role of the platform in the transaction chain for VAT purposes, in a sense "shifting" the responsibility for VAT collection to the platforms, it can ensure a more equitable and efficient VAT system. However, successful implementation requires careful consideration of legal, administrative, and practical issues.

[155] European Commission, 'VAT Expert Group No 095: VAT Treatment of the Sharing Economy, Taxud.c.1(2020)5816454' (n 68).

[156] As indicated in the literature, enacting temporary regulations allows for gathering a greater quantity and better quality of data regarding the effects of controversial regulations, and also compels legislative bodies to periodically assess the impact of such regulations in order to extend their validity. For these reasons, temporary legislation becomes particularly attractive in contexts dominated by uncertainty, where the risk of excessive reaction is significant, as is the case with platform economies. Gabriel Doménech-Pascual, 'Sharing Economy and Regulatory Strategies towards Legal Change' (2016) 7 European Journal of Risk Regulation 717, 723–724.

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