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From: To:	Presidency Delegations
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Subject:	Presidency steering note on short-term accommodation rental

Delegations will find attached a Presidency steering note on the short-term accommodation rental concept in the 'platform economy'-related parts of the proposals for the meeting of the WPTQ (Indirect Taxation - VAT) on 29 March 2023.

VAT in the Digital Age

Presidency note on the definition of short-term accommodation rental

Working Party on Tax Questions 29 March 2023 (AM)

Introduction

One of the stated aims of the Commission proposals in the 'VAT in the Digital Age' package is to address challenges related to the platform economy by enhancing the role of platforms in the collection of VAT when they facilitate the supply of short-term accommodation rental or passenger transport services.

The provisions related to this aim were discussed at length at the meeting of the Working Party on Tax Questions of 28 February 2023. In that meeting, the Presidency singled out the definition of 'short-term accommodation rental' in the proposed new paragraph 3 in Article 135 of the VAT Directive as a topic that deserved a separate discussion. Member States were therefore invited to provide comments on this definition, including possible alternative approaches.

Based on the comments and suggestions kindly submitted by delegations, the Presidency plans to hold an exchange of views on this subject at the meeting of the WPTQ on 29 March 2023, guided by the questions below.

Definition of short-term accommodation rental (STAR)

Definition of STAR – Interaction of existing and new provisions in Article 135

- Rental of accommodation is shorter or equal to 45 days: rental is taxed and the deemed supplier rule in Article 28a could be applicable.

- Rental of accommodation is longer than 45 days: rental can be taxed or exempt (depending on the scope defined by the Member State) and the deemed supplier in Article 28a does not apply.

According to the Commission proposal, Article 135(3), the uninterrupted rental of accommodation for a maximum of 45 days with or without the provision of other ancillary services shall be regarded as having a similar function to the hotel sector. For such supplies the deemed supplier regime applies under certain circumstances (Article 28a). According to Article 135(1) and (2)– which have not been amended – leasing or letting of immovable property shall be exempt, but Member States shall exclude from the exemption the provision of accommodation in the hotel sector or in sectors having a similar function and may extend taxation beyond this (last paragraph of Article 135(2). Member States are therefore still free

to decide whether rentals of more than 45 days shall be taxed or exempt, although the deemed supplier would not be applicable then.

The Presidency's view is that the definition of short-term accommodation should be based on objective and well-defined criteria. The criteria should be easy to apply and should not require further examination or analysis by the platform or the underlying suppliers. As far as possible, burdensome case-by-case analysis with interpretation issues should be avoided. According to the Presidency, a time limit is the best solution to avoid divergent interpretations in different Member States. Taking additional ancillary services into consideration, for example heating, electricity, cleaning services, clean sheets and towels etcetera, will lead to case-by-case analyses and entail administrative burdens for platforms. It could also be easy to circumvent the rules and avoid taxation by, for example, excluding certain services from the rental. It can be argued that problems will arise regardless of which criteria are used, but a time limit criterion would minimise these issues. Some Member States have stated that it would be more appropriate to use *nights* instead of *days*. The Presidency agrees this would be easier to define and more in line with the terms used for accommodation booking in the hotel sector.

Member States have underlined the need to clarify the relationship between Article 135(3) on the one hand and Article 135(2) as well as Article 135(1)(l) on the other hand. It is the Presidency's view that considering rentals for periods longer than 45 days as leasing of immovable property, and therefore exempt according to Article 135(1)(l), would lead to unwanted consequences. In practice, this could considerably limit the application of Article 135(2). For example, renting of a camping site or an apartment in a hotel for more than 45 days would be considered exempt supplies. The Presidency view is, therefore, that Member States should be allowed to tax such supplies according to Article 135(2), outside the scope of the new deemed supplier scheme. This seems already to be the case under the current proposal, but could be clarified.

It is the Presidency's view that STAR is similar in nature to hotel accommodation. However, it has clearly emerged that several Member States would like to keep the possibility to define in national legislation what is covered by Article 135(2)(a). There does not seem to be a need for a harmonised definition of accommodation as expressed in Article 135(2). As clarified above, the scope of the STAR definition in the Commission proposal is general, meaning that rental of accommodation for a maximum of 45 days is treated in the same way as the provision of accommodation in the hotel sector. It is the Presidency's understanding that the STAR definition is to be used in cases where platforms facilitate the supply. It can therefore be questioned whether the general scope of Article 135(3) goes beyond what is necessary, and whether a targeted scope would not be more appropriate. The Presidency would therefore like to know if Member States agree that the application of the definition of short-term accommodation rental in Article 135(3) should be limited to situations where Article 28a applies. This could cause compliance difficulties for Member States in that, depending on whether a supply is made under the deemed supply or not, the rules could be manipulated

in order to avoid VAT. It would also require that the underlying supplier knows the rules in the Member State of the property whenever the platform is not the deemed supplier.

To summarise:

- **As the proposal is drafted, Article 135(3) is a general measure stating that all supplies of accommodation for less than 45 days should be treated as similar to the hotel sector, and taxed accordingly.**

- **In addition, for supplies which are longer than 45 days, Member States may tax or exempt them according to the current rules.**

Possible anti-abuse clause

In the current proposal there is no anti-abuse clause in order to avoid abusive deductions of VAT under the 45 days time limit. The Presidency does not see the need for such a clause, but some Member States have raised concerns over the possibility of individuals registering for VAT, carrying out refurbishments (or even on the acquisition itself of a new building) etc. on their property, and reclaiming the VAT with the justification that they are letting it on a platform (whilst the platform lettings are minimal). Whilst it could be argued that there are sufficient safeguards already in the VAT Directive to deal with this measure, it may be possible to include an anti-abuse clause similar in nature to Article 131, but which specifically targets abuse of registration in this area.

Questions

1. ***Do you agree that it should be clarified that when the 45-day limit is exceeded, the supply remains taxable under 135(2)(a), according to Member States definitions, or exempt under Article 135 (1)(l) and that Member States may further limit this exemption according to the last subparagraph of Article 135(2)?***
2. ***Should STAR according to Article 135(3) be limited to situations where Article 28a is applicable?***
3. ***Can you agree with a time limit of 45 days in Article 135(3)? If not, what alternative approach could be as easy to apply for platforms?***
4. ***Do you think that nights instead of days should be used as the criterion when deciding the time limit?***
5. ***Do you see a need for an inclusion of an anti-abuse clause, which would be optional for Member States to implement, in order to avoid abusive deduction of VAT under the 45 days time limit? Or do you consider that existing deduction rules (including the prorata) are enough to address this risk?***