



VAT NEWSLETTER

## VAT in the Digital Age (Part 1): New deemed reseller model for online platforms and online marketplaces

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### 1 Background

The European Commission's draft directive for the "VAT in the Digital Age" initiative contains proposals for the VAT treatment of the platform economy. These regulations are intended to combat VAT fraud and also to ensure equal treatment of the platform economy with traditional suppliers. The draft directive proposes to extend the deemed reseller model to all supplies of goods within the EU via online marketplaces. Moreover, it shall apply to the service sectors of short-term accommodation rental and passenger transport. The changes in the VAT Directive are to take effect on 01.01.2025.

### 2 Extension of the deemed reseller model for online marketplaces

A deemed reseller model is not something new for online platforms. The national legislator already introduced such a model for online marketplaces with effect of 01.07.2021. Through sec. 3 (3a) of the German VAT Act (Art. 14a of the VAT Directive), a chain transaction between an online trader, an online marketplace and a customer is, in certain cases, fictitious when a third country connection (an online trader established in a third country or importation of goods with a material value of EUR 150 or less) is involved (cf. KMLZ VAT Newsletter 33 | 2020). This model has proven itself in practice. Therefore, according to Art. 14a (2) and (3) of the draft VAT Directive, the deemed reseller model is to apply to all supplies of goods within the EU and intra-Community transfers of own goods via online marketplaces. The online marketplace's supply of goods to the customer is subject to regular taxation. The online trader's supply of goods to the online marketplace is VAT exempt (Art. 136a of the draft VAT Directive). In the special case that the online marketplace is only established in one Member State and only facilitates local supplies of goods within that Member State, the deemed reseller model shall not apply (Art. 14a (4) of the draft VAT Directive).

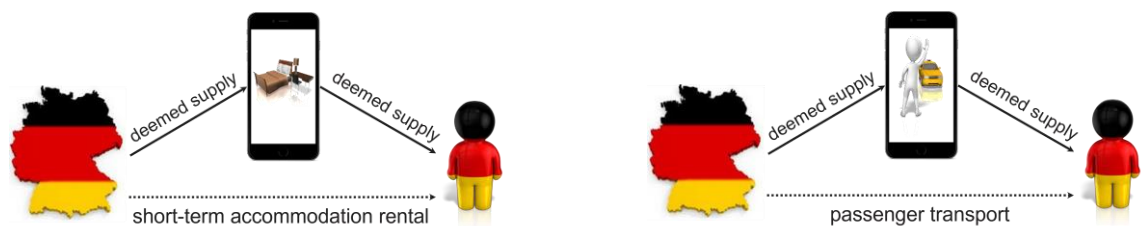


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### 3 Deemed reseller model for short-term accommodation rental and passenger transport

Due to their enormous reach, accommodation platforms compete with the hotel industry, while passenger transport platforms compete with taxi companies. In contrast to traditional providers, private individuals and small businesses can currently offer their rental or passenger transport services via platforms, without incurring VAT. A deemed reseller model is intended to counteract this. Electronic interfaces, which support the short-term rental of accommodation or passenger transport, are treated as if they had themselves received and performed these supplies (Art. 28a of the draft VAT Directive). The term "electronic interface" is to be understood very broadly. Not only platforms and portals fall within the scope, but also all other comparable electronic means. "Short-term rental of accommodation" is defined as the uninterrupted rental of accommodation for a maximum of 45 days (Art.135 (3) of the draft VAT Directive). The deemed reseller model is linked to the capacity of the lessor / driver. It is deemed to apply, in particular, if the lessor / driver is a private individual or a small enterprise (Art. 28a letters a-f of the draft VAT Directive). The supply of the electronic interface to the customer is subject to regular taxation. The short-term accommodation rental is not subject to the margin taxation (Art. 306 (3) of the draft VAT Directive). The supply of the lessor / driver to the electronic interface is VAT exempt (Art. 136b of the draft VAT Directive).



### 4 Consequences for the practice

Through the deemed reseller model, the rental of accommodation and passenger transport services, which were previously not subject to VAT, will now become taxable. This is politically motivated and will damage the business model. Naturally, VAT will be passed on to the customer, thus making the supplies more expensive for customers. Affected platforms must verify the capacity of the lessor / driver and answer the question of whether "facilitating" takes place. Art. 9b-9d of the draft Council Implementing Regulation 282/2011-E provides important information on this. However, questions concerning delimitation are pre-programmed. As the platforms become the tax debtor, adjustments in tax determination and in the accounting / ERP system, are required.

On the other hand, online marketplaces that already converted their systems to the deemed reseller model by 01.07.2021 can rejoice. Online marketplaces that have so far waived cases involving third countries must now adapt their systems accordingly. The fact that all supplies of goods within the EU and intra-Community transfers of own goods via online marketplaces are now to be subject to the deemed reseller model is a relief for online marketplaces. In practice, this will eliminate the very complex task of determining whether the deemed reseller model applies or whether the online trader is liable for VAT. Since the treatment under VAT law differs significantly in the two alternatives, delimitation errors currently lead to considerable risks for online marketplaces. These risks will no longer exist in the future. In addition, marketplace liability under sec. 22f (1), 25e of the German VAT Act only comes into consideration if the online trader is liable for VAT. However, in the future, a VAT liability on the part of the online trader is no longer envisaged as a rule. The draft directive thus heralds the end of the national regulations on marketplace liability under sec. 22f (1), 25e of the German VAT Act, which, in practice, have proven to be controversial.