



EU Council adopts DAC 7 introducing a mandatory exchange of information for digital platform operators

On 22 March 2021, EU Council ministers unanimously voted in favour of the adoption of so called “**DAC 7**”, that is the Directive introducing the sixth amendment to the Directive 2011/16/EU on administrative cooperation in the field of taxation (so called “**DAC**”).

The changes made to DAC concern, in particular:

- a clarification of the standard of “foreseeable relevance” as a precondition for the exchange of information on request (including in respect of “group requests”);
- the extension of the mandatory automatic exchange of information to royalties;
- a new legal framework for joint audits;
- new mandatory exchange of information for operators of certain digital platforms.

With regard to the new mandatory exchange of information for digital platform operators, which represents the main change introduced by DAC 7, the rationale behind these reporting obligations is, on the one hand, to provide the tax authorities of Member States with the information necessary to ensure the enforcement of tax rules in relation to commercial activities carried out through the intermediation of digital platforms and, on the other hand, to introduce standardised reporting requirements that should reduce the administrative burdens on the operators of such platforms.

The new reporting obligations will apply to operators of digital platforms which allow certain sellers to be connected to other users in order to carry out certain reportable activities for such users. Reportable activities include the rental of immovable property, the provision of personal services, the sale of goods and the rental of any mode of transport and will be subject to reporting obligations regardless of whether they are cross-border in nature and regardless of the legal nature of the seller.

The information to be reported will include information relevant to the correct identification of the seller (e.g., name, registered office, TIN, VAT number, date of birth, business registration number, each member State of residence of the seller) and information relevant to the determination of the profits realised by the seller through the platform (e.g., the amount of the consideration paid to the seller and the number of activities for which it was paid, the account number where the consideration is credited, the address of the property being rented out, number of days for which it was rented out and type of property).

The information should be reported by the platform operator to the competent tax authorities within 31 January of the year following each calendar year starting from the one beginning on 1 January 2023.

The receiving Member State will then exchange the information received with the tax authorities of the other Member States.

The new reporting obligations will apply to:

- EU digital platform operators: operators that are resident for tax purposes in a Member State or, if they are not so resident, that are incorporated under the laws of a Member State or have their place of management or a permanent establishment in a Member State;
- non-EU digital platform operators: operators who do not meet any of the prior territorial connections with the EU but operate digital platforms that facilitate the carrying out of reportable activities (i) by sellers that are resident or rented out a property located in a Member State or (ii) that concern real estate properties located in Member States. These operators will be exempted from their reporting duties towards the EU authorities if they are required to fulfil similar reporting obligations to the authorities of their home country and such authorities will exchange the information with the EU authorities pursuant to a specific agreement.

EU reporting platform operators which qualify as such in more than one Member State are allowed to elect a single Member State where to carry out the reporting. Non-EU reporting platform operators are generally allowed to elect the Member State in which they register for reporting rules purposes.

The reporting digital platform operator will need to carry out specific due diligence procedures over the sellers in order to collect and verify the information necessary for the purposes of the exchange.

The provisions of the Directive concerning the new reporting obligations on digital platform operators need to be implemented by the Member States within 31 December 2022 and Member States shall apply them from 1 January 2023.

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