

Bill on implementation of EU Directive on the exchange of information in the digital platform economy (DAC7)

On March 23, 2022 Deputy Minister of Finance Mr. Van Rij presented the bill on the EU Directive on Information Exchange in the Digital Platform Economy (Implementation) Act to the Lower House of Parliament. This bill regulates, among other things, the introduction of a reporting obligation for digital platform operators to provide the Dutch tax authorities with information about certain users ('sellers') on their platform. This obligation stems from [Council Directive \(EU\) 2021/514](#) ('DAC7') and applies for the first time to financial years as of January 1, 2023, with as first reporting deadline January 31, 2024.

What is DAC7?

The digitalization of the economy and the emergence of digital platforms has changed many business sectors and resulted in a shift from traditional labor relations based on employment contracts to the provision of services on an independent basis. There is thus a risk that the income sellers realize via digital platforms is not fully reported.

DAC7 is a uniform reporting obligation for platform operators, stemming from the need for tax authorities to obtain more transparency about the income sellers generate via digital platforms. DAC7 is also intended to introduce a uniform EU-wide reporting obligation in order to reduce the administrative burden for platform operators.

The reporting obligation requires reporting platform operators to collect and verify data and information from certain sellers. Reporting platform operators should then report this information on an annual basis to the tax authorities of an EU Member State and to the sellers so that they are aware of which information has been provided. This information will subsequently be exchanged among tax authorities within the EU, depending on where the seller is resident or where the immovable property is located.

Who falls under the Directive?

The obligation to collect, verify and report information applies to both EU and non-EU platform operators. The reporting obligation applies to both cross-border relevant activities and domestic activities. Non-EU platform operators are digital platforms that are not residents of an EU Member State, but the sellers using the platform do however have an EU nexus. An EU nexus means that the sellers are residents of an EU Member State or rent immovable property that is located in an EU Member State.

Reporting platform operators must provide information about the sellers on digital platforms. These are sellers that, during the reporting period, are registered on the platform and perform a relevant activity.

'Relevant activity' is defined as follows:

- i) the rental of immovable property;
- ii) the performance of a personal service;
- iii) the sale of goods;
- iv) the rental of any mode of transport.

The above activities must be performed for a consideration, the amount of which is known or reasonably knowable by the reporting platform operator.

'Relevant activity' does not include activities that are performed by a seller in the capacity of employee of a reporting platform operator, or by an employee of an entity related to the reporting platform operator.

There are a number of exceptions to the term 'seller', which means, for example, that no information has to be shared about listed companies or entities related to them that sell via digital platforms. Several thresholds apply to reduce unnecessary compliance costs, for example for small sellers, for which the reporting platform operator during the reporting period has facilitated less than 30 relevant activities and whose total consideration for these activities did not exceed EUR 2,000. The reporting obligation does not apply to these sellers.

Which information must be shared?

There are three categories of information that should be reported:

- 1) information about the reporting platform operator itself (for example the registered office address, the tax identification number (TIN) and the business name of the platform);
- 2) information about the reportable sellers, with the information to be provided distinguishing between sellers that rent immovable property and sellers that perform other relevant activities;
- 3) information about the consideration(s) and associated relevant activities and (if applicable) the address and land registration number of the immovable property.

Reporting deadlines

The reporting platform operators falling under the reporting obligation must provide the information to the tax authorities no later than January 31 of the year following the reporting period. A reporting period corresponds to the calendar year covered by the report. The reporting obligation applies for the first time as of January 1, 2023, with as first reporting deadline January 31, 2024.

For sellers that were already registered on January 1, 2023, the deadline for complying with the collection and verification requirements has been extended until December 31, 2024.

Not having the correct information about a seller may result in the platform operator being obliged to close the account of that seller, which means the seller can no longer use the platform.

Penalties

If failure to comply with the obligations is due to the intent or gross negligence of a platform operator, an administrative penalty up to a maximum of EUR 900,000 may be imposed on the platform operator, or they may be prosecuted.

The Explanatory Memorandum notes that a penalty should be proportionate and that, depending on the facts and circumstances to be weighed up by the tax inspector, this could result in a substantial reduction of the amount. Besides penalty-reducing circumstances there may however also be aggravating circumstances, such as repeat offenses.

Changes as a result of the internet consultation

As a result of the internet consultation that ran from October 8, 2021 through to November 9, 2021, the explanatory notes to various matters were supplemented. Article-by-article explanations were expanded, including for personal services, series of transactions and the collection and verification requirements, and examples were added to several definitions.

Not all the questions raised in the internet consultation were followed-up. For example, it is still not entirely clear which actions (or failure to act) are subject to penalties. A welcome clarification is that the Explanatory Memorandum explicitly states that the Netherlands will not impose any further or additional requirements for the reportable information than the requirements included in the Annex to the EU Directive. In addition, it is stated that both current and future interpretations by the OECD will be followed for the purposes of the obligations that will be included in the International Assistance in the Levying of Taxes Act (*Wet op de internationale bijstandsverlening bij de heffing van belastingen*; WIB) as a result of the bill. This is a welcome clarification, because with regard to the interpretation of terms, the Explanatory Memorandum refers in various places to the OECD's [Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy](#).

Other changes to the bill

In addition to the introduction of a reporting obligation for platform operators, several other changes are now being proposed with a view to further intensifying the cooperation between tax authorities, for example with regard to joint audits.

Data management

The reporting obligation must be transposed into Dutch legislation by December 31, 2022 at the latest. Although the first reporting deadline is January 31, 2024, we advise platform operators to start working on this new reporting obligation now, so that as from January 1, 2023 the required information can be collected and verified in the prescribed manner.

Data management plays an essential role in this. To what extent is all the reportable data available? Do sellers still have to provide additional data so that the reporting obligation can be complied with? How should the verification of data be organized? In terms of data management, these and other questions play a role in complying with the new reporting obligation. Our specialists would be pleased to help you with this.

KPMG Meijburg & Co
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