

Alert | Regulatory & Compliance



December 2021

EU's DAC7: New Tax Reporting Obligations for Platform Operators

This GT Alert covers the following:

- EU Directive introduces DAC7
- New EU tax transparency rules obliging platform operators to disclose data on income derived by sellers
- Requirements, regulatory risk, and burden of the Directive on platform operators' supply chains

In March 2021, the Council of the European Union (**Council**) adopted **Directive 2021/514 (Directive)** amending – for the sixth time – Council Directive 2011/16/EU on administrative cooperation in the field of taxation (**DAC**). The Directive effectively introduces the seventh version of DAC (**DAC7**).

EU Member States have until Dec. 31, 2022, to transpose the Directive into national law.¹ Against this background, the Dutch Ministry of Finance recently opened an internet consultation on the Dutch Act implementing the Directive, which closed Nov. 8, 2021.

¹ Except for – simply put – the rules on joint audits.

The amendments set out in the Directive aim at improving administrative tax cooperation – and countering tax fraud/tax evasion – and address the challenges posed by the digital platform economy. Among other things, they include:

- (a) A definition of “foreseeable relevance”² and rules on the exchange of information in relation to groups of taxpayers;
- (b) A new framework for joint audits; and
- (c) New rules extending the EU tax transparency requirements to “platforms”³ and introducing an obligation for “platform operators”⁴ to provide information on income derived by sellers through platforms.

With respect to this latter amendment, the information collected will be shared with EU Member State tax authorities with the intent of addressing the perceived lack of tax compliance, and the apparent under-declaration of income earned from commercial activities carried out through the platforms. The rules affect platform operators offering sellers access to:

- (a) The rental of immovable property, including both residential and commercial property, as well as any other immovable property and parking spaces;
- (b) A personal service;
- (c) The sale of goods; and
- (d) The rental of any mode of transport.

These platform businesses need to be – and remain – alert to the requirements, regulatory risk, and burden of the Directive on their supply chains, and start planning for compliance with the forthcoming regulatory regime of the Directive. Non-compliant businesses risk penalties for infringements of national provisions adopted pursuant to the Directive.

Background to the Directive and Link with Existing EU Policy and Instruments

To accommodate new EU initiatives in the field of tax transparency, DAC has been the subject of a series of amendments over the years. Those changes mainly introduced reporting obligations followed by a communication to other EU Member States in relation to financial accounts, advance cross-border rulings and advance pricing arrangements, country-by-country reports, and reportable cross-border arrangements. The amendments thus extended the scope of the automatic exchange of information.

More recently, the European Commission (**Commission**) has been (a) monitoring the application of, and (b) **evaluating** DAC. While significant improvements have been made in the field of automatic

² Article 5a(1) of the Directive provides that “the requested information is foreseeably relevant where, at the time the request is made, the requesting authority considers that, in accordance with its national law, there is a reasonable possibility that the requested information will be relevant to the tax affairs of one or several taxpayers, whether identified by name or otherwise, and be justified for the purposes of the investigation.”

³ The Annex to the Directive sets out that 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. It also includes any arrangement for the collection and payment of a Consideration in respect of Relevant Activity.”

⁴ The Annex to the Directive provides that a platform operator means “an Entity that contracts with Sellers to make available all or part of a Platform to such Sellers.”

exchange of information, there was a need to improve provisions that relate to all forms of exchanges of information and administrative cooperation.

DAC7 also follows the 2020 publication by the Organisation for Economic Co-operation and Development (OECD) of [Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy](#).

DAC7 in Practice

Given the broad definitions set out in the Directive, affected platforms, *inter alia*, include: Tech companies that provide ride-hailing, car-pooling, or food delivery; livestreaming apps that allow users to access performances or events against payment; platforms facilitating the peer-to-peer sale of goods or services; and online travel agents.

Both EU and non-EU platform operators are captured – with the latter having a reporting obligation where they facilitate reportable commercial activities of EU sellers/suppliers or facilitate the rental of immovable property located in the EU (irrespective of the place of residence of the sellers).⁵ The reporting obligation extends to both domestic and cross-border commercial activities.

The Directive provides a few exceptions to and exemptions from the obligation to report:

- (a) Platforms exclusively allowing for the processing of payments, the listing or advertising of goods/services, and the redirection/transfer of users elsewhere are not covered by the Directive;
- (b) Sellers listed on a stock exchange do not need to be reported; and
- (c) Platform operators are not required to report small sellers/suppliers – with less than 30 sales not exceeding an annual consideration of € 2,000 – or rentals made by entities like hotel chains or tour operators that provide rentals at a high frequency – at least 2,000 rentals per year in respect of a property listing.

The information to be reported includes the following:

- (a) Identification details of the seller, including name, address, VAT, tax identification, and business registration numbers;
- (b) An overview of sums paid/payable to sellers from the reportable activities per quarter, and any platform fees, commissions or taxes withheld; and
- (c) The address of the rented immovable property, if and where relevant.

Such information must not only be collected from sellers by platform operators but also verified in line with the due diligence procedures set out in the Directive. Where a seller does not provide the information required for the due diligence after two reminders, but not prior to the expiration of 60 days, platform operators must either close the account of the seller or withhold payment to the seller.

⁵ However, an exemption from reporting applies to non-EU platform operators in jurisdictions where adequate arrangements exist to ensure an exchange of information equivalent to the one under DAC7

The reporting by the platform operator must be made with one tax authority in an EU Member State with which the operator has a nexus or, for non-EU platform operators, in an EU Member State of choice.

Conclusion

The Directive imposes costs and a significant burden on platform operators.

EU Member States have until Dec. 31, 2022, to transpose the Directive into national law. The national rules adopted pursuant to the Directive will apply throughout the EU from Jan. 1, 2023.⁶ Platform operators must report by no later than Jan. 31 of the year following the calendar year in which a seller is identified as a seller to be reported – i.e., the first reporting deadline will be Jan. 31, 2024, for the reporting year 2023.

The Directive leaves it to EU Member States to lay down the rules on penalties for failing to comply with the DAC7 requirements, provided that the penalties are effective, proportionate, and dissuasive.

Although 2023 may sound far away, platform operators need to start thinking about the DAC7 implications in terms of assessing (a) the extent and quality of data currently available and (b) the processes and systems to be put in place for the additional collection, verification, management, and transmission of data.

Authors

This GT Alert was prepared by:

- **Robert Hardy** | +31 20 301 7327 | Robert.Hardy@gtlaw.com
- **Thomas van der Vliet** | +31 20 301 7387 | Thomas.vandervliet@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.~ Houston. Las Vegas. London.* Los Angeles. Mexico City.+ Miami. Milan.» Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. Salt Lake City. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.² Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ↯Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ²Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2021 Greenberg Traurig, LLP. All rights reserved.*

⁶ Except for – simply put – the rules on joint audits.