



DAC 7 Digital platforms | New reporting obligation

Tax Alert



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Law 13/2023 of 24 May 2023, amending Spanish General Tax Law 58/2003 of 17 December 2003 (the "GTL") and transposing Council Directive 2021/514 of 22 March 2021¹ (known as "DAC7"), aims, among other things, to transpose into Spanish domestic law the new reporting obligation on "*digital platform operators*" and the rules for the effective exchange of information between European Union Member States, albeit without establishing minimum thresholds for compliance.

DAC7 established a mandate whereby Member States were required to have transposed its contents by **31 December 2022** at the latest, with a view to its implementation as of **1 January 2023**.

In Spain's case, as it is explained below, transposition has yet to be completed as the Regulations that are to implement the obligation recently included in the GTL have yet to be approved.

Despite the lack of implementing the Regulations, the first informative return is, in principle, to be filed as of **1 January 2024**². This means that, **on confirming whether or not they are subject to this obligation, and if they have not done so already, companies must begin to adapt their systems and processes** with a view to compliance with this new obligation, be it internally or via an external provider.

1. Introduction - Background and current situation

1.1. International scope (OECD / G20)

In light of the various challenges posed by the so-called "digital economy" over recent years, both national and European Union tax authorities and the OECD-G20 in particular have sought to set in place tax measures with varying scopes, with a view to combating tax fraud, profit shifting and aggressive tax planning methods.

In this context, the activity of digital platforms and access thereby to certain information of importance to the tax authorities was brought to the forefront, leading to a series of OECD initiatives aimed at establishing framework rules for reporting this information. These rules laid the groundwork for DAC7 and were published between July 2020 and October 2023, when the OECD updated the frequently asked questions that may prove helpful in light of the absence of domestic guidelines and the obligation to file the first return in January 2024.

1.2. Community scope - EU

The work carried out in the EU in this area resulted in the publication of [Council Directive \(EU\) 2021/514](#) of 22 March 2021, which entered into force on 14 April 2021 (20 days after its publication in the OJEU).

This Directive introduces a new mechanism for the exchange of information between EU Member States, focussing on the information obtained from "*digital platform operators*".

Generally speaking, *Reporting Platform Operators* must submit to the tax authorities of the Member State in which they are registered, certain information on the *Sellers* that use their platforms to sell their goods and render their services. The tax authority of the Member State receiving such information must then submit it to the tax authority of the Member State of residence of the seller and, in the case of rental of immovable property, also to the tax authority of the Member State in which the immovable property is located.

1.3. National scope - Spain

The [transposition process](#) in Spain began in February 2022, when the Ministry of Finance published two pieces of legislation for submission to public consultation:

- the [Draft bill for the transposition of DAC7](#), and
- the [Draft Royal Decree](#) for the Law's implementation,

Both pieces of draft legislation were accompanied by the respective regulatory impact assessment reports.

On 27 December 2022, the Cabinet approved the Draft Law for the transposition of DAC7, which was subsequently submitted to the lower house of the Spanish Parliament. This began the ordinary legislative process that has culminated with the publication of [Law 13/2023](#) of 24 May 2023, amending the Spanish GTL and transposing DAC7.

¹ *Amending, for the sixth time, Directive 2011/16/EU on administrative cooperation in the field of taxation and other tax regulations ("DAC")*.

² *Final provision eleven of the Draft Regulations of 9 June 2023*.

This modification of the GTL and, more specifically, its new **additional provision 25**, introduces into domestic law the general rules on the reporting obligations and due diligence procedures applicable to “*digital platform operators*”.

This new provision includes aspects that must be regulated via primary legislation and refers to the provisions of the new article 8ac and Annex V of Directive 2011/16/EU. The provisions now introduced into the GTL are closely aligned with the obligations established under the European legislation.

The amendment also regulates the new penalty regime, which the Directive leaves to the discretion of each Member State.

The transposition of DAC7 must be completed by the relevant new regulations. To this end, a [Draft Royal Decree](#) implementing the rules that will permit effective enforcement of DAC7 is currently being processed..

These regulations will be essential for the purposes of establishing the due diligence rules and procedures to be observed by “*digital platform operators*” with respect to the traders referred to as “*sellers*” under DAC7. They must also define other essential aspects of the new reporting obligation, such as the scope, deadlines for filing and content of the relevant information.

The **form tax return** will also have to be approved and, as administrations in other countries have done, the Spanish tax authorities are expected to issue **guidelines on interpretation** to facilitate understanding and define the scope of the new legislation.

Moreover, Spain has signed the “*Multilateral Competent Authority Agreement on automatic exchange of information on income derived through digital platforms*” (official state gazette of 19 September 2023), with a view to permitting the automatic exchange of information gathered by the different authorities and improving compliance with international tax obligations, subject to confidentiality and other guarantees.

1.4. Status of implementation in third countries

The transposition process in Spain is running considerably behind schedule. However, other European Union countries have already introduced the obligation on digital platform operators into their domestic legislation and some have even published

guidelines for interpretation, thereby facilitating compliance by affected parties.

2. What does the new obligation entail?

The ultimate objective of DAC7 is to foster a relationship of cooperation between the tax authorities of the Member States by establishing due diligence rules and procedures that will facilitate the automatic exchange of tax information on *Relevant Activities* obtained via *Reporting Platform Operators*.

The principal obligation under DAC7 is thus the exchange of tax-relevant information on *Relevant Activities* between the tax authorities of the Member States, for which purpose such information must have been previously reported by the *Reporting Platform Operators*.

With this in mind, two separate obligations are established, which we analyse in greater detail below:

- The gathering and reporting of information on Relevant Activities; and,
- The automatic exchange of information between Member States.

(1) Gathering and supply / reporting of information on relevant activities

To comply with this obligation, which in turn can be sub-divided into two, a **system is established based on different obligations depending on the party involved in the *Relevant Activities*** to which the reportable information relates (parties are identified by means of colours - red, blue and green):

- Information gathering
 - i) **Reportable Sellers**³ must furnish the information required of *Reporting Platform Operators* to enable such operators to comply with their information gathering duty under the due diligence procedure described below.

³ Per Section I subparagraph B of Annex V of the Directive, this means a platform user (either an individual or an “entity”), that is resident in a Member State (or which rents out immovable property located in a Member State), which is registered at any

moment during the Reportable Period on the platform and either provides a Relevant Activity during the Reportable Period or is paid or credited Consideration in connection with a Relevant Activity during the Reportable Period.

- ii) *Reporting Platform Operators*⁴ must comply with the **due diligence** rules and procedures which entail:
- **identifying Reportable Sellers**,
 - **gathering** all of the information to be supplied with respect to each Reportable Seller and,
 - correctly processing the information obtained from *Reportable Sellers*, such that it is possible to **verify** that it is accurate.
- iii) *Reporting Platform Operators* are also required to **keep records** of the steps undertaken and any documentation relied upon for ten years after the end of the reportable period (additional provision 25 of the Spanish GTL).
- Supply / reporting of the information
 - i) **Registration** on the census by *Reporting Platform Operators*.
 - ii) *Reporting Platform Operators* must **supply** the tax authorities of the relevant Member States with the information obtained from *Reportable Sellers*.

(2) Automatic exchange of information between Member States

Member States must ensure the **automatic exchange of the information** furnished by *Reporting Platform Operators* with other Member States. This exchange will effectively take place via access by Member States to the common communication network (“CCN”) developed for the purpose by the European Union.

2.1. Obligated entities

Under DAC7, it is *Reporting Platform Operators* that are required to comply with the due diligence rules and procedures and reporting requirements. This is because, in the view of the European legislator, it is the Reporting Platform Operators that are best placed to collect and verify the necessary information on the Reportable Sellers operating on their digital platforms.

That said, the exchange of information involves three parties:

- (i) in the first instance, the **Reportable Sellers**, who provide certain information to *Reporting Platform Operators*,
- (ii) the **platform operators** then report or supply the information to the *Member States* and, finally,
- (iii) the **Member States** exchange all of the information gathered with the competent authority of the Member State in which the *Reportable Seller* is resident and, where the *Seller* renders real property rental services, to the Member State in which the property is located.

2.2. Information to be reported

Under DAC7, *Reporting Platform Operators* must share with the tax authorities of the relevant Member States all data relating to the pursuit of certain economic activities.

DAC7 draws a distinction between the reportable activities referred to as *Relevant Activities*, which are activities carried out for *Consideration* and included in the following list:

- The *rental* of immovable property. This is deemed to include residential, commercial and any other type of immoveable property, including parking spaces.
- The *rental* of any mode of transport.
- *Personal Service*.
- The sale of Goods; Annex V Section V of the Directive defines “*goods*” simply as any tangible property, including no further requirements.

“*Consideration*”, which is a requirement for an activity to be treated as a *Relevant Activity* means compensation in any form, net of any fees, commissions or taxes withheld or charged by *Reporting Platform Operators*, that is paid to a seller in connection with a *Relevant Activity*. The amount paid must be known or reasonably knowable by the *Reporting Platform Operator*.

⁴ Per Section I subparagraph A of Annex V of the Directive, a reporting platform operator is an entity that contracts with sellers to make available all or part of a platform to such sellers,

which is resident in a Member State or, where it is not resident in a Member State, meets certain requirements (e.g., it has its place of effective management in a Member State, it facilitates the carrying out of a Relevant Activity, etc.).

Depending on whether the *Reportable Seller* involved in the activity is a natural or legal person, they will first have to furnish certain information (e.g., name, taxpayer identification number, VAT number, address, etc.) to the “platform operators” to enable them to comply with their information gathering duty.

Having completed the relevant due diligence procedures, the *Reporting Platform Operators* must supply/report to the tax authorities:

- (i) information relating to the platform operator itself, and
- (ii) detailed information on *Reportable Sellers* (that provided by the sellers themselves, along with the particulars of the relevant bank accounts and their holders, the amounts of payments and consideration, fees, commissions, taxes withheld or charged, etc.).

3. Compliance with the obligation

3.1. Formal obligations - deadlines and forms

The period with respect to which the reporting obligation must be met (the *Reportable Period*) is the calendar year. The new reporting obligation is expected to be implemented for the first period in 2023.

(1) Gathering and supply / reporting of information on relevant activities

- **Information gathering**

Reporting Platform Operators will foreseeably be expected to gather the necessary information and complete the relevant due diligence procedures by **31 December**⁵ of the Reportable Period to which the information relates.

- Supply / reporting

- i) **Registration** on the census by *Reporting Platform Operators*.

Registration on the census will enable the Spanish tax authorities to identify the date of commencement of activities by *Reporting Platform Operators*. The Ministerial Order approving the census return for registration or amendment of data on, or deregistration from, the register of *Reporting Platform*

Operators and the deadlines for its filing, has yet to be issued.

- ii) *Reporting Platform Operators* must **supply** the tax authorities of the relevant Member States with the information obtained from *Reportable Sellers*.

Both the Directive (subparagraph 3 of article 8ac) and the Draft Regulation (final provision 11) provide that the first informative return must be filed by *Reporting Platform Operators* as of **1 January 2024**, in respect of the information for the preceding *Reportable Period* (calendar year 2023).

The Directive also provides (Annex V, Section III) that the relevant information must be reported no later than **31 January** of the year following the calendar year in which the “seller” is identified as a Reportable Seller.

As noted above, the Ministerial Order approving the informative return form and confirming the filing deadlines applicable to the first and subsequent filings has yet to be approved.

(2) Automatic exchange of information between Member States

Insofar as the aim of this obligation is to prevent tax fraud, tax evasion and tax avoidance, thereby enabling the tax authorities of Member States to access this information before annual tax assessments are performed, reported information must be exchanged **within one month of its reporting**⁶ (i.e., in **February** of the next calendar year).

In this connection, article 8ac, subparagraph 3 of the DAC provides that this exchange must take place within **two months** of the end of the Reportable Period (i.e., **February** of the next calendar year).

3.2. Infringements, penalties and powers of inspection

In line with the powers granted to each Member State under DAC7 to establish the relevant penalty regime, additional provision 25 of the Spanish GTL (introduced by Law 13/2023) provides for application of the general penalty regime under Title IV of the GTL, along with a specific penalty regime in certain cases:

⁵ Article 7.1 of the Draft Regulation and Annex V, Section II(F), subparagraph 1 of the DAC.

⁶ Recital (20) of DAC7.

(i) Specific penalty regime for Reportable Sellers

- Failure to report mandatory information to *Reporting Platform Operators* by the deadline, or the reporting of false, incomplete or inaccurate information constitutes a serious tax infringement, punishable with a fixed monetary fine of **Euros 300**.
- Provision is also made for **closure of the “seller’s” account** on the platform (following two reminders and once 60 calendar days have elapsed since the initial request), and a prohibition on their re-registration or withholding of payment of the Consideration until such time as the necessary information is provided.

(ii) Specific penalty regime for “platform operators”

- Breach of the **due diligence** obligation. This breach will be treated as a serious breach, punishable with a fixed monetary fine of **Euros 200 for each seller** with respect to which the obligations deriving from the due diligence rules and procedures have been breached.
- Breach of the **registration** obligation of *Reporting Platform Operators* not resident in the EU. This breach may be treated as a very serious infringement subject to a fine equal to **three times** the fine that would have applied due to failure to supply this information under the general rules established in Title IV of the GTL.
- Breach of the **reporting** obligation of *Reporting Platform Operators* not resident in the EU. Following two requests, the tax authorities may order **precautionary deregistration** of the operator from the relevant census. Once its deregistration is ordered, the operator may only re-register if it provides the tax authorities with sufficient assurance that it will comply with the reporting obligation, including the communication of the outstanding information to be reported.

The tax authorities are also granted express **powers of inspection**:

“Notwithstanding the powers to audit and investigate the registration and reporting obligations referred to in this additional provision in accordance with the general rules under this Law, the tax authorities may verify and investigate compliance with the due diligence rules and procedures to be applied by Reporting Platform Operators”.

4. Practical recommendations

As envisaged in DAC7 itself, the main aim of this new obligation is to gather information and make it available to the tax authorities which, in an increasingly digital economy, often face difficulties when it comes to accessing such information and, in particular, correctly determining the gross income received in the country in question from commercial activities carried out via platforms established in other jurisdictions.

Tax authorities are aware of both the importance of **data** to enable them to carry out their oversight tasks and the potential impact of correct information gathering for the monitoring and assessment of all manner of obligations and taxes (e.g., the tax on certain digital services, value added tax, personal income tax, Pillar II, etc.)

Companies are thus recommended to perform an exhaustive analysis of the impact of these rules and any data that may need to be reported, while ensuring the appropriate processing of any information to be reported.

Despite the delay in the complete adoption by the Spanish government of measures permitting effective compliance with this new obligation, since the draft implementing regulations have already been published, it is reasonable to expect that they will be approved by December 2023, to permit timely fulfilment of the first reporting obligation (as of 1 January 2024).

It is, in short, highly recommendable that entities adopt the necessary measures to ensure that they comply with these obligations, paying particular attention to implementation of the systems or solutions that will enable them to do so. Likewise, they would be well advised to permit the automation of their processes with a view to both timely compliance and guaranteeing the quality of the relevant information.

At KPMG, we have a team of specialists able to help our clients to first analyse and understand the impact of the new DAC7 obligation on their business, and then review their internal systems to identify any improvements that may be needed to enable them to comply with the relevant due diligence and reporting obligations.

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