



# Euro Tax Flash from KPMG's EU Tax Centre



[Revision of the Directive on Administrative Cooperation \(DAC7\)](#)

[EU Tax Centre comment on DAC7](#)

[Council conclusions on fair and effective taxation, including on taxation of the digitalized economy](#)

[EU Tax Centre comment on Council conclusions](#)

## **Agreement on reporting requirements for digital businesses (DAC7) and exchange of views on international issues**

Directive on Administrative Cooperation – Automatic Exchange of Information – Fair Taxation – Digitalized Economy – EU own resources – Carbon Border Adjustment Mechanism – Financial Transactions Tax

In a meeting on December 1, 2020, the Economic and Financial Affairs Council of the EU (ECOFIN) discussed the proposal for an amendment to the Directive on administrative cooperation in the field of taxation (the DAC), on which agreement was reached at technical level. The amendment (DAC7) will allow member states' tax authorities to collect and automatically exchange information on income earned by sellers on digital platforms, from 2023 onwards.

Finance ministers of EU Member States also exchanged views on a range of international taxation issues including the OECD's work on solutions to the tax challenges of the digital economy and considered the possible way forward at international level and for the EU. The Council reinforced its support for the OECD's work, aimed at reaching a global consensus-based solution at the latest by mid-2021.

## **Revision of the Directive on Administrative Cooperation (DAC7)**

### **Background**

On July 15, 2020, the European Commission (EC) published [its proposal](#) for a Council Directive, which extends the EU tax transparency rules to digital platforms and introduces an

obligation for platform operators to provide information on income derived by sellers through the platform. This information will then be automatically exchanged by that Member State with the tax authorities of the other Member States. The aim is to increase the ability of tax authorities to determine whether income from sales or services via digital platforms is correctly declared.

The proposal is part of the new Tax Package (see [ETF 433](#)) and comes in the form of an amendment to the Directive on Administrative Cooperation in the field of taxation (the DAC).

Following several non-public discussions in the Council, the initial proposal has been amended and a revised text [was published](#).

### The updated proposal

The rules will impact both EU platform operators, as well as non-EU entities, if the latter facilitate reportable commercial activities of EU sellers/providers or the rental of immovable property located in the EU. Reportable activities include the rental of immovable property, personal services, sale of goods, and rental of any mode of transport. While initially included in the scope, investments in the context of crowdfunding were excluded from the updated proposal. In line with OECD's Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy ([OECD Model Rules](#)), platform operators are no longer required to report rentals made by hotel chains or tour operators where a certain threshold is met.

The reporting obligation will cover both cross-border and non-cross-border commercial activities.

Operators falling within the scope of DAC7 will be required to collect and verify in line with due diligence procedures the information from sellers/providers on their online platform. Subsequently, certain information will be reported to the sellers/providers and to the relevant tax authority. Such information includes, *inter alia*, an overview of amounts paid to sellers from the reportable activities and platform fees and commissions incurred. Additional details must be collected / reported for transactions involving immovable property.

### Timing and location of reporting

Platform operators must update the reportable information on a quarterly basis and disclose it to the tax authorities no later than January 31 of the following calendar year. EU entities which qualify as reportable platform operators in more than one Member State, are allowed to elect the Member State where reporting is carried out.

Non-EU platform operators required to report under DAC7 are generally allowed to elect the Member State in which they register for the purposes of the reporting rules. The updated text of the proposal introduces exemptions applicable to foreign platform operators from jurisdictions where adequate arrangements exist to ensure an exchange of information equivalent to the one under DAC7.

### Exchange of information

The disclosed information will be exchanged automatically, on an annual basis, via the EU common communication network by using an XML schema developed by the Commission. The

automatic exchange of information will take place within two months of the end of the year for which information was filed.

For foreign platform operators benefiting from the reporting exemption under DAC7, the EC was conferred with implementing powers to determine whether the information to be exchanged under a relevant agreement between the foreign jurisdiction and a Member State is equivalent to the one under DAC7.

### *Sanctions*

Where reportable sellers fail to provide after two reminders the information required for the due diligence, but not sooner than the expiration of a 60-day period, platform operators are required to either close their account or withhold payment to the seller.

The proposal leaves it to Member States to introduce sanctions for failing to comply with the DAC7 requirements. However, penalties must be “effective, proportionate and dissuasive”.

### *Joint audits*

DAC7 includes clarification and improvement of the existing rules on administrative cooperation. Among others, a new section was added laying down an explicit and clear legal framework for the conduct of joint audits between two or more Member States. This framework will be operational in all member states from 2024 at the latest.

### *Next steps*

The Council is expected to adopt the DAC7 in the coming weeks, once the opinions of the European Parliament and of the European Economic and Social Committee have been received (non-binding) and the legal-linguistic revision has taken place.

All EU member states will need to adapt and publish their legislation by December 31, 2022, at the latest. DAC7 will need to be enforced by January 1, 2023 throughout all EU member states. This represents a postponement by one year as opposed to the initial proposal

### **EU Tax Centre comment**

The reporting requirement for platform operators is one of the latest developments in the area of fair, efficient and sustainable taxation which has been a focus point within the European Union as early as 2015. While the speed with which the agreement has been reached on DAC7 – five months from the EC's initial proposal – is impressive, it will be interesting to see if Member States, as well as platform operators falling within its scope would face similar challenges when implementing and interpreting the rules as in the case of DAC6.

While certain changes to the initial text of the DAC7 proposal were made, which brings the proposal more in line with OECD regime (e.g. the exclusion of crowdfunding, introduction of potential exemptions applicable to hotels), the scope of the activities reportable under DAC7 remains significantly larger - for example, the sale of goods is not included within the scope of the OECD Model Rules. With the exemption from the DAC7 reporting applicable where foreign platform operators are subject to comparable rules in a non-EU jurisdiction, and that information is exchanged with a Member State, this difference may lead to challenges for foreign platform operators that wish to apply the exemption.

## Council conclusions on fair and effective taxation, including on taxation of the digitalized economy

In the light of the Council's [conclusions](#) on fair and effective taxation, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond (November 27, 2020), the finance ministers also exchanged views on a range of international taxation issues including the OECD's work on solutions to the tax challenges of the digital economy. The Council welcomed the progress made by the OECD on BEPS 2.0 – see a KPMG [TaxNewsFlash](#) for more details – and reaffirmed its engagement to the process.

In its conclusions, the Council asks the European Commission to engage in the relevant preparatory work on the possibilities for implementing the global agreement in line with EU law. It is also noted that the European Council will assess the issue in March 2021.

The Council also took note of the European Council's position on additional own resource needed to support recovery from the effects of the pandemic. The Commission is therefore expected to work towards the introduction of additional own resources from a carbon border adjustment mechanism (CBAM) and a digital levy, (see E-news [Issue 121](#)), on which the Commission will put forward a proposal by mid-2021, with a view to its introduction at the latest by January 1, 2023. In its work on the latter proposal, the Commission is invited to consider the ongoing negotiations at OECD level. It is also noted that other own resources may include a Financial Transaction Tax.

The Council welcomes the European Commission's intention to further amend the DAC (DAC8) to address the exchange of information on alternative means of payment and investment, such as crypto-assets and e-money and stresses that this work should be carried out consistently with the OECD.

The conclusions also endorse the Commission's initiative on an EU cooperative compliance framework to facilitate and promote tax compliance for businesses, also taking account of the relevant work at the OECD.

## EU Tax Centre comment

In addition to the request to carry out its work in preparation for the implementation of a global solution, the Council also asks the European Commission to consider options available in the absence of an international consensus by mid-2021. It will be interesting to see what proposals the European Commission will consider for this alternative scenario and how they would relate to the EU digital levy, which is being considered as part of the new own resources package.

As regards the other proposal on own resources - the CBAM, the European Commission conducted a public consultation (closed on October 28, 2020). For more details on the consultation and the related KPMG response, please refer to KPMG's Global responsible Tax Project [website](#).

Should you have any queries, please do not hesitate to contact [KPMG's EU Tax Centre](#), or, as appropriate, your local KPMG tax advisor.



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