

# DAC7 AND ITS GLOBAL REACH - EXPANDING AUTOMATIC INFORMATION EXCHANGE TO DIGITAL PLATFORMS

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## INTRODUCTION

On 22 March 2021, the Council of the European Union (EU) adopted Directive 2021/514 (DAC7). This directive aims to expand the Directive on Administrative Cooperation 2011/16/EU (“DAC”).

In short, DAC7 introduces a reporting obligation for ‘digital platforms’ located both inside and outside of the EU, and an automatic exchange of information between EU Member States’ Tax Authorities, on revenues generated by ‘reportable sellers’ performing ‘relevant activities’ through these digital platforms as of 1 January 2023. This would enable the Tax Authorities in the EU to better track and tax the goods and services that are being sold through digital platforms by private individuals and businesses in the EU. On 23 March 2022, the Dutch State Secretary of Finance presented the bill for the implementation of DAC7 in the Dutch legislation to the Dutch House of Representatives (in Dutch: ‘Tweede Kamer der Staten-Generaal’).

## BACKGROUND

Typically, a digital platform enables providers of goods and services to reach consumers across country-borders. This does not require operators of digital platforms to maintain a physical presence in the country of residence of the consumers, nor is it necessary for the sellers which make use of the platform to maintain such presence. As a result, the economic activities conducted through the digital platform are hardly traceable for the Tax Authorities of the countries where the trade is conducted (digitally). This often makes it almost

impossible for Tax Authorities to obtain information to determine whether the remittance of taxes in respect of these activities is performed properly. To date, this information cannot be obtained from the operator of the digital platform either, due to the presumption that the platform is ‘merely’ the intermediary with respect to the economic activities. This is further hampered by the fact that Tax Authorities often lack the resources to obtain the necessary information to carry out tax audits. Therefore, the cross-border dimension of services offered, and goods sold through these digital platforms has created a complex environment where it can be difficult for Tax Authorities to enforce tax rules, ensure tax compliance and collect taxes.

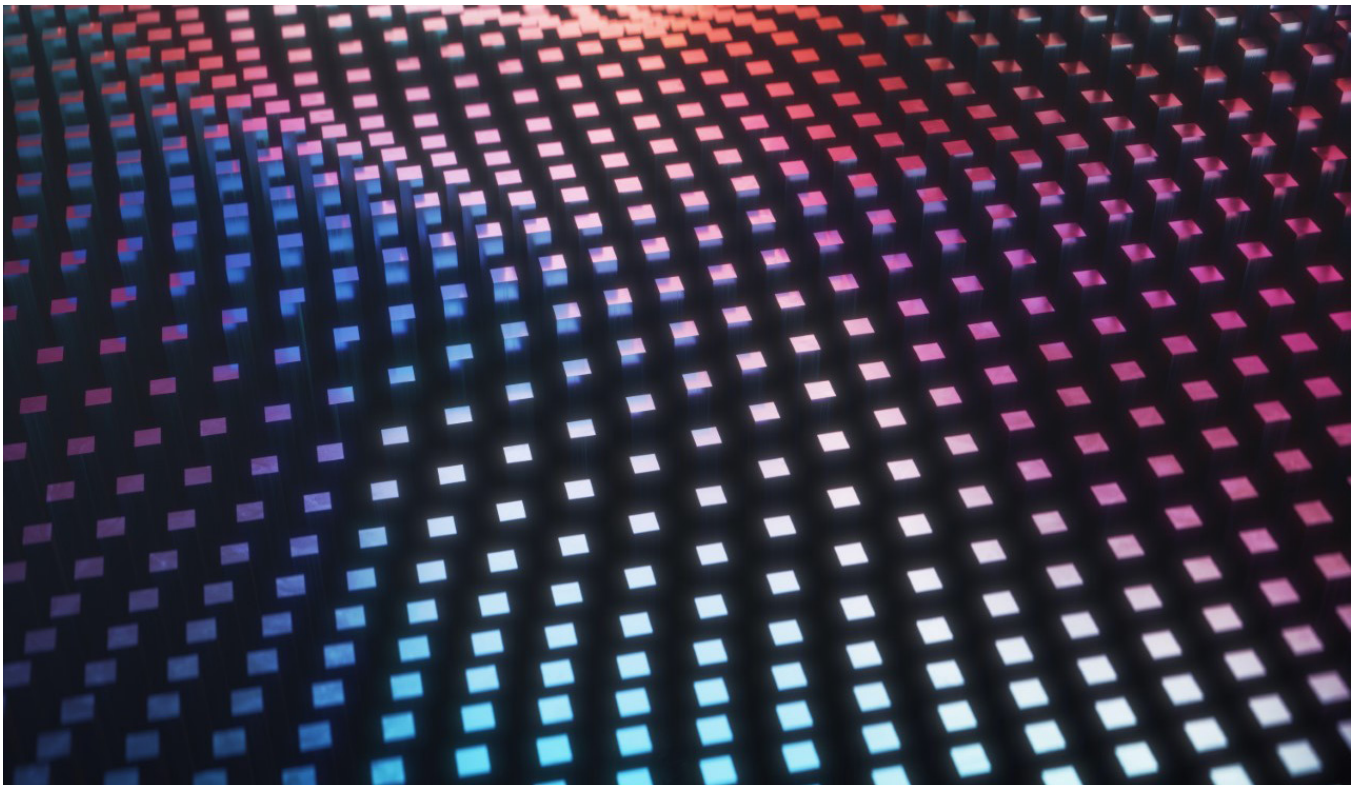
Given this background, DAC7 introduces a uniform reporting standard for reportable digital platforms, as they are generally in a better position to gather the necessary information and verify which economic activities are carried out on their platforms. In addition, the Directive requires an automatic exchange of this information between Tax Authorities of the EU Member States. This way, the EU wants to create more transparency in order to counteract tax avoidance, in line with previous EU and non-EU initiatives intended to promote transparency in the field of taxation. The Country-by-Country Reporting (“CbCR”) regulations are a prime example of such initiative.

CbCR rules have been introduced in both the EU and in the Caribbean parts of the Kingdom. Under CbCR rules, certain multinationals must, briefly said, report data with respect to foreign group entities and transactions that take place within a group to the Tax Authorities in a certain jurisdiction, which in turn can exchange this information internationally. At both the EU and OECD level, governments currently want to expand the scope of the CbCR regulations, by requiring the CbCR information to also be made publicly available. In this context the information would then have to be published by the companies in scope on, for example, their websites. Contrary to these CbCR transparency initiatives, the information that will be exchanged under DAC7 is not public. Thus, in the absence of public disclosure of this data, DAC7 should in principle not affect competitive considerations of reportable sellers or, more broadly, the public opinion. On the other hand, reportable sellers are unable to use DAC7 as a marketing tool; in fact, full transparency is generally appreciated.

## DIGITAL PLATFORMS

Under the DAC7 rules, a digital platform can generally take any form of software, including an app, a website or a similar digital resource that allows sellers to offer relevant activities through the platform. The most obvious examples are Amazon, Airbnb and Uber. The relevant activities in the context of DAC7 are the rental of real estate or any means of transportation, a personal service and the sale of goods.

However, the term digital platform for purposes of DAC7 does not include software that, without any further intervention in carrying out a relevant activity, exclusively allows processing of payments in relation to relevant activities, listing or advertising of a relevant activity, or redirecting/transferring users to a platform. As the DAC7 reporting requirement is particularly aimed at platforms connecting buyers to a third-party sellers, online stores and similar digital platforms that only sell their own products fall outside of the scope of the DAC7 reporting requirements.





### **REPORTABLE DIGITAL PLATFORMS**

The DAC7 rules will apply to digital platforms located both within the EU and outside of the EU. However, non-EU digital platforms only fall in scope of the DAC7 rules if they facilitate the performance of a relevant activity by reportable sellers or a relevant activity related to the rental of real estate located in an EU Member State. In these cases, non-EU digital platforms should in principle register in an EU Member State to submit the required information. Given this global reach of DAC7, the reporting requirements may in certain cases also extend to Caribbean operators of digital platforms and Caribbean residents (sellers) who use these platforms that, for example, rent out real estate in the EU.

### **REPORTABLE SELLERS AND REPORTABLE INFORMATION**

The reporting requirement pertains to all information relevant for the correct identification of the reportable seller (including service providers) and information relevant to determine the revenue and profit realized by the reportable seller. In this context, a reportable seller is any person who is (fiscally) resident of an EU Member State and persons who are not (fiscally) residents of an EU Member State but rent out real estate property located in an EU Member State. However, the following are not considered reportable sellers for purposes of DAC7:

- Government entities.
- Entities whose shares that are regularly traded on a recognized stock exchange.
- Real estate operators (hotel chains) to the extent that real estate (hotel rooms) is rented out more than 2,000 times per year.
- Persons who sell less than 30 items (goods) via the platform during a calendar year and for which the turnover does not exceed Euro 2,000.

## DEADLINES

As of 1 January 2023, reportable digital platforms must report information related to the reportable sellers to the competent tax authorities of the EU Member State where they are registered annually. For 2023, reporting must be done by ultimately 31 January 2024. The relevant receiving EU Member State will then exchange the data annually with the tax authorities of the EU Member States to which the information may be relevant. In order to meet these reporting requirements in a timely manner, reportable digital platforms must be registered in an EU Member State timely and must have due diligence procedures in place by ultimately 1 January 2023 in order to appropriately identify reportable sellers and verify the gathered information.

## IMPLICATIONS

DAC7 underlines the EU's ongoing efforts to develop and expand global tax transparency to ensure tax compliance. The obligation to report income earned through digital platforms and the exchange of such information between Tax Authorities of the EU is intended to obtain all relevant information related to relevant economic activities performed on a digital platform. An EU harmonized reporting framework is further aimed at increasing legal certainty and providing greater clarity to digital platform operators, who may currently face different unharmonized reporting obligations in the jurisdictions in which they operate.

As the DAC7 reporting obligations expand to non-EU platforms with EU sellers or with respect to real estate property located in the EU, it is safe to say DAC7 has a global reach. Companies in scope of DAC7, which could also include Caribbean digital platforms, need to assess which internal procedures should be set in place in order to timely and appropriately meet the DAC7 requirements.



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