



## Update on DAC 7 Impact on Irish entities

In this update we consider [Council Directive \(EU\) 2021/514 amending Council Directive 2011/16/EU on administrative cooperation in the field of taxation](#) (the “**Directive**” or “**DAC7**”), which was formally adopted by the European Union (the “**EU**”) on 22 March 2021. Provisions transposing DAC 7 have now been inserted into the Irish Finance Bill 2021, which is due to be enacted on 25 December 2021.

### **DAC 7: Background to the Directive**

[Directive 2011/16/EU](#) (the “**DAC**”) lays down the rules and procedures that national authorities in Member States of the EU must apply when exchanging information on tax matters. The European Commission opened a consultation period on 7 February 2020 seeking to strengthen the exchange of information in taxation, with the particular purpose of combating the challenges posed by an online economy.

The purpose of the amendments made through DAC7 is to extend the scope of the existing provisions of the DAC on exchanges of information and administrative cooperation between the Member States, in particular the principle of annual information reporting, to online platforms hosting sellers carrying out certain activities (as discussed below). Member States are required to automatically exchange information on income generated by sellers on digital platforms.

Under DAC7 national authorities are required to identify situations where tax should be paid, and are to reduce the administrative burden placed on platforms, who have to deal with several, different national reporting requirements. The new rules introduce a reporting obligation for digital platforms located both inside and outside the EU and an automatic exchange of information between Member States’ tax administrations on revenues generated by sellers on these platforms as of 1 January 2023.

### **Does DAC7 Apply to your Business?**

DAC7 extends extend the scope of reporting obligations to require digital platform operators to collect and report information on the income realised by Sellers carrying out Relevant Activities. As such the obligations under DAC7 will impact digital platform “Platform Operators” meaning entities that contract with Sellers to make available all or part of a Platform in order that they might carry out the Relevant Activities caught by the Directive.

“Platforms” are defined in DAC7 as any software, including a website and mobile applications, allowing Sellers to be connected to users. It also includes any arrangement for the collection and payment of consideration, being compensation in any form, net of withholdings by the platform operator in respect of Relevant Activity.

“Relevant Activities” within the scope of the Directive mean any of the following:

- the rental of immovable property, including both residential and commercial property, as well as any other immovable property and parking spaces;
  - a Personal Service, being time- or task-based work performed at the request of the user;
  - the sale of Goods, being tangible property; and
  - the rental of any mode of transport.
- Therefore DAC7 will apply to business which provide software to Sellers, or host such Sellers on websites or apps, that offer the above activities to users.

### **Who is Required to Report?**

Platform operators will be required to gather information and report in line with the obligations of DAC7, as opposed to individual Sellers. Platform operators caught under DAC7 will be required to collect and report information on the income realised by the Sellers utilising their platforms. In order to be considered within the scope of DAC7 a platform operator must be resident for tax purposes in a Member State of the EU, or incorporated and managed in the Member State, or facilitates the carrying out of a Relevant Activity in a Member State. If these criteria are met in more than one Member State, it will be for the platform operator to elect which Member State in which it will fulfil its obligations under DAC7.

It is important to note that platform operators can be excluded from the requirement to report under DAC7 where they are able to demonstrate to the competent authorities in their relevant Member State that their entire business model is such that there are no reportable Sellers.

### **What is to be Reported?**

Once a Seller is identified as to be reported upon, the platform operator must provide the following information to the relevant tax authority:

- name, including business name, and relevant identification details of the Seller;
- total consideration paid or credited during each quarter of the relevant period;
- the number of Relevant Activities in respect of which it was paid or credited; and
- any fees, commissions or taxes withheld or charged by the Reporting Platform Operator during each quarter of the Reportable Period.

Where the Relevant Activity relates to the rental of property, certain additional information will be required, such as the address and land registration number of the property.

The information gathered by tax authorities, including details of revenues generated, will be automatically exchanged with the tax authorities of other Member States with a view to enabling tax authorities to assess income taxes and VAT correctly.

In order to comply with the above requirements platform operators within the scope of DAC7 will be required to implement new due diligence procedures, to assist with the identification of Sellers to be reported on. This will consist of gathering all information on Sellers, including VAT numbers where available, and testing its accuracy in a manner similar to Anti-Money Laundering requirements.

### **Irish Transposition of DAC7**

All Member States are required to transpose the Directive into domestic legislation by 31 December 2022, to be applicable from 1 January 2023. The first reports will then be due on 31 January 2024. In order to be prepared for this deadline, entities falling within the scope of platform operators will need to have their due diligence procedures in place by 31 December 2022.

The process of transposing DAC 7 has begun with Finance Bill 2021, which sets out the definitions required, including the definitions of Sellers, Platform Operators, Excluded Platform Operators, and Relevant Activities. Given reporting under DAC 7 is not due to commence until 2024, it is envisaged that the remaining aspects of DAC 7 to be transposed will be done so under Finance Bill 2022.

## Failure to Comply with DAC7

Penalties for non-compliance and infringements of national provisions adopted on foot of the Directive are to be set down by individual Member States. The penalties provided for should be effective, proportionate and dissuasive. Given the lack of Irish measures at present it is not clear precisely what measures will be taken against Platform Operators who fail to comply with DAC7.

However in circumstances where Platform Operators have tried on two occasions to gather information from relevant Sellers to no avail, Platform Operators will be required to close the accounts of these Sellers if 60 days have passed since the last reminder. Re-registration of these Sellers should then be blocked for as long as the seller has not disclosed the requested information.

## Preparing for DAC7

The first reports under DAC7 are due to be made in 2024 in relation to the 2023 financial year. As such entities that are caught under the scope of DAC7 should be considering their approach to compliance with particular regard to:

- Assessing the extent and quality of data currently collated with regard to Sellers;
- Examining the current systems and processes in places with regard to data collection and how these processes will need to be updated to comply with new due diligence requirements;
- Assessing the Sellers hosted through their businesses, and determining which will be caught by DAC7. This will inform the scope of their compliance requirements, as well as assist in informing those Sellers of their new tax obligations; and
- Determining the place of registration for DAC7 purposes where this decision becomes relevant.

Although DAC7 does not affect the tax liabilities of Sellers, the Directive will require information to be provided to Platform Operators lest Sellers lose their ability to hold open accounts on website. Sellers should familiarise themselves with the information to be provided to Platform Operators, and be prepared to provide the information requested of them.

**If you would like to find out more information or discuss any of the topics covered, please feel free to contact a member of our team.**

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