

EU expands reporting obligations under DAC7 and DAC8 for the digital economy and crypto assets

March 23, 2021

In brief

While EU Member States, advisors and taxpayers are still navigating the DAC6 landscape, the European Union is moving quickly to expand reporting obligations in the digital world. On March 10, the European Parliament (EP) adopted the DAC7 text featuring the new digital platform reporting rules proposed last year by the EU Commission. On March 22, the EU Council adopted the new rules, applicable January 1, 2023. Separately on March 10, the Commission launched a public consultation on DAC8, which would impose reporting obligations for e-money and crypto assets.

MNEs should consider preparing how to establish or extend internal control mechanisms to address the new reporting obligations. Failure to comply with these regulations could result in significant penalties.

In detail

Background

EU Council Directive 2018/822 of May 25, 2018, amending Directive 2011/16/EU concerning the “mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (broadly known as ‘DAC6’),” introduced a new mandatory disclosure regime for European advisors and taxpayers.

Last summer, the EU Commission proposed a sixth amendment to this Directive aiming to extend the EU tax transparency rules to digital platforms (‘DAC7’). On November 25, 2020, the EU Council presented draft text of the DAC7 amendments, which generally aligned with the Commission’s proposal.

On March 10, 2021, the EP, acting as a consulting party to the process, adopted (by 568 votes in favor, 63 votes against, and 64 abstentions) the EU Commission’s proposed DAC7 text with minimal amendments.

The EU Council can incorporate changes based on the EP’s recommendations, and additional consultation would be required only if it intends to substantially deviate from the EU Commission’s proposal.

On March 22, 2021, an EU Council press release announced adoption of the DAC7 rules to strengthen administrative cooperation and include sales through digital platforms. These new rules would apply beginning January 1, 2023.

Separately on March 10, 2021, the EU Commission launched an open public consultation designed to gather stakeholders' views on possible enhancements to EU administrative cooperation in the field of taxation, with an emphasis on crypto assets and e-money and the provision of services by intermediaries. Stakeholders' responses will help the Commission determine whether an EU legislative initiative is needed to target tax revenue losses due to the underreporting of income or revenues that crypto assets and e-money generate. The proposal is expected to conclude in the third quarter of 2021.

Digital taxation

The area of digital taxation has significantly evolved since the OECD presented the BEPS Action 1 (Addressing the Tax Challenges of the Digital Economy) final report in 2015.

The European Union has been at the forefront of digital taxation developments, as well as initiatives regarding information exchange among tax authorities. DAC7 and DAC8 aim to merge both worlds and promote enhanced tax transparency and cooperation mechanisms in the digital economy environment.

DAC7

According to the European Union, a reliable system for the tracing and reporting of taxable events is needed to address challenges posed by the digitalization of the economy. Furthermore, this would ensure that income and revenue earned through digital platforms are correctly reported to tax authorities and properly taxed in the respective Member State.

The DAC7 rules extend the scope of the EU automatic information exchange to include digital platform operators. DAC7 aims to mitigate the challenges posed by the digitalization of the economy, given that the digital platform economy makes traceability and the detection of taxable events by tax authorities very difficult, thereby possibly leading to tax revenue shortfalls.

Due to the wide use of digital platforms in commercial activities, both by individuals and entities, the European Union understands the need for reportable information, regardless of the seller's legal nature. In particular, the reporting of income earned through such activities should provide tax administrations with a comprehensive set of information necessary for correctly assessing the income tax due.

Under the proposed DAC7 Directive, 'Reporting Platform Operators' that perform a 'Relevant Activity' will be required to disclose a significant amount of information on a regular basis, including counterparty details and income generated in their business activity.

An entity qualifies as a Reporting Platform Operator if it meets the following conditions:

'Platform' means any software, including a website or a part thereof, and applications, including mobile applications, accessible by users and allowing Sellers to connect with other users for the purpose of carrying out a Relevant Activity, directly or indirectly, to such users.

1. 'Platform Operator' means an entity that contracts with sellers to make available all or part of a Platform to such sellers.
2. 'Reporting Platform Operator' means a Platform Operator that:
 - a. is resident for tax purposes in a Member State
 - b. is incorporated under the laws of a Member State
 - c. has a place of management (including effective management) in a Member State
 - d. has a permanent establishment in a Member State, or

- e. is neither resident for tax purposes, nor incorporated or managed in a Member State, nor has a permanent establishment in a Member State, but facilitates the conduct of a Relevant Activity or the rental of immovable property located in a Member State.
3. 'Relevant Activity' means an activity carried out for consideration and is a:
- a. rental of immovable property, including both residential and commercial property
 - b. personal service
 - c. sale of goods, or
 - d. rental of any mode of transport.

Following the EU Council's adoption of these rules, EU Member States will be required to adopt these rules into their domestic legislation by December 31, 2022. The provisions shall apply beginning January 1, 2023.

Observation: Based on previous DAC6 experience, local mismatches in the implementation and interpretation of the DAC7 Directive likely will occur within the EU community. This could result in additional complexity and increased compliance for MNEs.

Additional DAC7 remarks

- The DAC7 rules include additional measures—extendable to previous obligations introduced by the DAC6 Directive—to prevent tax fraud and tax avoidance, as follows:
 - Joint Audits: The possibility to perform administrative inquiries jointly conducted by two or more tax authorities of different EU Member States. These audits will be linked to one or more persons of common or complementary interest. EU Member states should implement these measures by January 1, 2024.
 - Foreseeable relevance: To ensure the effectiveness of information exchanges between tax administrations and prevent unjustified refusals of requests, as well as provide legal clarity and certainty for both tax administrations and taxpayers, the DAC7 rules delineate and codify the internationally agreed standard of foreseeable relevance of information.
- Belgium introduced reporting obligations for digital platforms on January 9, 2021. When compared to the DAC7 text, the Belgian rules have a narrower scope and only cover services delivered in Belgium. Additional amendments to this legislation likely will be adopted after approval of the DAC7 Directive by the EU institutions.
- On July 3, 2020, the OECD published the [*Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy*](#). This publication contains the OECD's model rules that require digital platforms to collect information on the income realized by those offering accommodation, transport, and personal services through platforms and to report the information to tax authorities. The DAC7 rules integrate and expand the scope of the OECD project.

DAC8

The DAC8 project aims to ensure adequate taxation of revenues generated from investments in, or payments with, crypto assets and e-money.

The DAC8 consultation aims to gather stakeholder views regarding the use of e-money and crypto assets, as well as determine the available information and potential reporting mechanisms to utilize.

The consultation period concludes on June 2, 2021 and the EU Commission will use the information gathered to prepare and define the provisions to implement for exchange of information purposes in the crypto asset and e-money environment.

Observation: Crypto operators, or similar parties, such as intermediaries in the crypto market, likely will become subject to similar obligations as the Reporting Platform Operators under DAC7.

See also

- [DAC6: The EU Directive on cross-border tax arrangements](#)
- [Insight: EC DAC 6: Disclosure requirements relating to cross-border arrangements effective July 1 \(June 2020\)](#)
- [Tax Readiness: Are you subject to EU mandatory reporting \(DAC6\)? \(Sep 2020\)](#)
- [Cross-border Tax Talks podcast: DAC6 Update - the latest EU disclosure rules \(June 2020\)](#)
- [PwC DAC6 Compare Tool](#)

The takeaway

MNEs operating with digital platforms may be affected by the new DAC7 rules adopted by the EU. Impacted groups could see a significant increase in their compliance burden. Such groups should prepare an action plan to establish or to extend internal control mechanisms to cover the new DAC7 reporting obligations, especially since failure to comply could result in significant penalties.

MNEs operating with virtual (crypto) assets also should monitor the DAC8 consultation process, which could also lead to a significant increase in their compliance burdens.

Let's talk

For a deeper discussion of how those rules might impact your business, please contact:

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