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EU Direct Tax Newsalert

European Union Adopts Mandatory Exchange of Information for Digital Platform Operators

On 22 March 2021, the Council of the European Union adopted an EU Directive expanding the scope of automatic exchange of information to digital platform operators and amending existing provisions on administrative cooperation in the field of taxation ("DAC7"). DAC7 introduces the 6th amendment to the Directive 2011/16/EU on administrative cooperation in the field of taxation ("DAC").

Exchange of information for Digital Platform Operators

The new rules aim to provide the EU Member States' tax authorities with the information necessary to ensure the enforcement of tax rules (such as income tax and VAT) regarding commercial activities performed with the intermediation of digital platforms and to introduce standardised reporting requirements that should reduce the administrative burdens on the digital platform operators.

The new reporting obligations will apply to operators of EU and non-EU digital platforms that allow certain sellers ("reportable sellers") to be connected to other users in order to perform the following (cross-border or domestic) activities:

- a) the rental of immovable property;
- b) the provision of personal services;
- c) the sale of goods; and
- d) the rental of any mode of transport.

Reporting will apply regardless of the legal nature of the seller. More specifically, EU digital platform operations are defined as operators that are resident for tax purposes in an EU Member State or, if not, they are incorporated under the laws of an EU Member State or have their place of management or a permanent establishment in an EU Member State.

Non-EU digital platform operators are defined as operators who do not meet any of the prior territorial nexus criteria with the EU but operate digital platforms that (a) facilitate the performing of reportable activities by reportable sellers or rent out a property located in an EU Member State or (b) concern rental of immovable property located in an EU Member State. Therefore, non-EU digital platform operators need to register in an EU Member State.

These operators will however be exempted from their reporting obligations if they have to

fulfil similar reporting obligations to the authorities of their home country (i.e. a third country) and such authorities will exchange the information with the EU authorities pursuant to a specific agreement.

EU reporting platform operators which qualify as such in more than one EU Member State are allowed to choose for a single EU Member State where to carry out the reporting. Non-EU reporting platform operators are generally allowed to elect the EU Member State in which they register for reporting rules purposes.

The information to be reported will include information relevant to the correct identification of the seller and information relevant to the determination of the profits realised by the seller through the platform. The information should be reported by the platform operator to the competent tax authorities on 31 January of the year following the calendar year in which the seller is identified as a Reportable Seller. The receiving EU Member State will then exchange the information received with the tax authorities of the other EU Member States.

Other amendments to the DAC

Apart from the above, DAC7 brings the following amendments to DAC:

- a clarification of the standard of "foreseeable relevance" as a precondition for the exchange of information on request (including in respect of "group requests"),
- the extension of the mandatory automatic exchange of information to royalties, and
- a new legal framework for joint audits.

Next steps

The adopted text of DAC7 will soon be published in the Official Journal of the EU. EU Member States must implement the Directive by 31 December 2022 and apply the new rules as of 1 January 2023. The first information corresponding to reportable periods as from 1 January 2023 will need to be reported in 2024.

