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Global Tax Alert

European Commission proposes revision of Directive on administrative cooperation

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Executive summary

On 15 July 2020, the European Commission (the Commission) published a [legislative proposal](#) for revision of the Directive on Administrative Cooperation (Council Directive 2011/16/EU or DAC), to extend the European Union (EU) tax transparency rules to digital platforms. The proposal introduces a reporting obligation for digital platforms and an automatic exchange of information between Member States' tax administrations on revenues generated by sellers on these platforms as of 1 January 2022. Besides introducing this new reporting obligation for digital platforms, a number of generic changes to the DAC not limited to digital platforms are also proposed, including a legal framework for the conduct of joint audits between two or more Member States, a definition of the term "foreseeable relevant" and rules on group requests. Moreover, the DAC is amended to clarify that the information exchanged can be used for value-added tax (VAT) and other indirect tax purposes.

The legislative proposal is part of a tax package for fair and simple taxation supporting the recovery of the EU, which also includes a Communication for an Action Plan presenting a number of upcoming initiatives for fair and simple taxation, and a Commission Communication on Tax Good Governance in the EU and beyond.¹

The proposed rules on reporting for digital platform operators are inspired by the work done at the Organisation for Economic Co-operation and Development (OECD) but are much wider in terms of scope and businesses affected.²

Detailed discussion

Background

In order to accommodate new initiatives of the Commission in the field of tax transparency, the DAC has been the subject of a series of amendments over the last several years. Specifically, the Commission has been monitoring the application and, in 2019, completed an evaluation of the DAC.³

On 7 February 2020, the Commission opened a [public consultation](#) to strengthen the exchange of information framework in the field of taxation focusing on the collection and exchange of data from digital platform providers.⁴ A number of possible options were presented and stakeholders gave their feedback in a total of 37 responses. In addition, the Commission carried out targeted consultations by holding a meeting on 27 February 2020 with various representatives of digital platform operators.

Commission proposal for revision of the DAC

The digital economy and the development of new business models create new challenges for tax administrations. According to the Commission, the characteristics of the digital platform economy make the traceability and detection of taxable events by tax authorities very difficult. In addition, the increased use of digital platforms for providing services and selling goods has led to inconsistent declarations of income by sellers, which poses a high risk of tax evasion. Besides that, the Commission took the opportunity to introduce some changes to the DAC which are not limited to digital platforms.

In light of this, the Commission published on 15 July 2020 a legislative proposal for revision of the DAC in order to:

- ▶ Introduce an automatic exchange of information between Member States' tax administrations for income/revenues generated by sellers on digital platforms. This information will help tax administrations verify that those who earn money through digital platforms pay their appropriate share of taxes.
- ▶ Strengthen administrative cooperation through the clarification of existing rules such as on joint audits.

The Commission invites the EU Member States to adopt the proposed amendments to the DAC by 31 January 2021 and apply the new provisions from 1 January 2022.

Reporting obligations for digital platforms and automatic exchange of information

According to the proposed rules, a “**reporting platform operator**” is any platform operator that is either a tax resident of a Member State or is incorporated under the laws of a Member State or has its place of management or a permanent establishment in a Member State. In addition, the scope of the rules also includes platform operators which do not meet any of these conditions but facilitate the performance of a relevant activity by reportable sellers that are residents in a Member State or with respect to the rental of immovable property located in a Member State. A “**seller**” is a platform user that is registered on the platform and carries out any of the relevant activities. A governmental entity is not considered as a seller.

The activities that are reportable under the proposed rules include the rental of immovable property, the provision of personal services, the sale of goods, the rental of any mode of transport, and investment and lending in the context of crowdfunding. Hence, the scope of the rules is broader than the OECD Model Rules, that cover transactions focusing on accommodation, transport and other personal services.

The proposed rules provide the following reporting process for the platform operator:

- ▶ **First step:** the reporting platform operators are obliged to collect and verify the information on the sellers in line with due diligence procedures included in the proposal.
- ▶ **Second step:** the reporting platform operators have to report information on the reportable sellers, which use their platform on which they operate, within one month following the end of the reportable period in which the seller is identified as a reportable seller. Reporting shall only take place in one Member State (i.e., single reporting).
- ▶ **Third step:** the reporting platform operators have to communicate the reported information to the competent authority of the Member State where the reportable seller is a resident or to the competent authority of the Member State where the immovable property is located.

Each reporting platform operator should report the following information with respect to each reportable seller:

- a) Identifying information, including the name, address and any tax identification number (TIN)
- b) Financial Account Identifier
- c) The name of the holder of the financial account to which the consideration is paid or credited if different from the name of the reportable seller and to the extent available to the reporting platform operator
- d) Each Member State in which the Reportable Seller is resident
- e) The total consideration paid or credited during each quarter of the reportable period
- f) Any fees, commissions or taxes withheld or charged by the reporting platform during each quarter of the reportable period

With respect to immovable property rental services, in addition to the above, the address, and where available the land registration number, of each property listing, the number of days each property listing was rented during the reportable period and the type of each property listing must also be reported.

For the effective implementation of the proposed rules, the proposal provides that if a reportable seller does not provide the required information after two reminders, the reporting platform operator has to close the account of such seller and prevent the seller from re-registering on the platform for the period of six months or withhold the payment of the consideration to the Seller.

The information reported has to be communicated by the competent authorities of the Member States where the reporting took place to the Member States where the reportable seller is a resident. The exchange will take place within two months following the end of the reportable period. Member States are also obliged to communicate the statistics on such exchanges to the Commission on an annual basis.

The automatic exchange of information will take place electronically via the EU common communication network (CCN) by using an XML schema developed by the Commission.

Enhancing administrative cooperation in general

The Commission proposed additional changes to clarify issues in relation to the presence of officials of a Member State during an inquiry in another Member State, simultaneous controls and joint audits.

In relation to all three categories of administrative cooperation, a response period of 30 days from the receipt of the request is proposed.

On the presence of officials in another Member State, it is enabled that interviews take place and records are examined without the limitations of national law of the requested Member State. Moreover, the option to participate in administrative inquiries through the use of electronic means of communication is added.

In relation to joint audits, the addition of a new section to the DAC is proposed to set forth an explicit and clear legal framework for the conduct of joint audits between two or more Member States.

For the purposes of the proposal, joint audits are defined as administrative inquiries conducted jointly by the competent authorities of two or more Member States, to examine a case linked to one or more persons of common or complementary interest to these Member States. As there is no explicit legal base for conducting joint audits, such joint actions are currently conducted based on the combined provisions of Directive 2011/16/EU regarding the presence of foreign officials in the territory of other Member States and on simultaneous controls.

As indicated earlier, according to the proposed framework, responses to requests for joint audits should be provided within 30 days from the receipt of the request. Rejections of requests should be duly justified. Also, the proposal provides that joint audits shall be carried out in accordance with the procedural arrangements that apply in the Member State where the conduct of actions related to the audit takes place. Accordingly, evidence collected in the context of a joint audit in one Member State pursuant to its law shall be mutually recognized by all other competent authorities of the Member States which participate in the joint audit.

Where competent authorities of two or more Member States conduct a joint audit, it is important that they agree on the facts and circumstances of the case and endeavor to reach an agreement on how to interpret the tax position of the audited person(s). In order to ensure that the outcome of a joint audit can be implemented in the participating Member States, the final report should have equivalent legal value to the relevant national instruments that are issued as a result of an audit in the participating Member States. Where necessary, Member States should provide the legal framework for the performance of a corresponding adjustment.

Changes to the existing framework for exchanges on request

For exchanges on request, the exchange of information is conditioned on the information being foreseeably relevant. The proposal introduces a definition of the standard of foreseeable relevance that applies in the case of requests of information under the DAC. The proposal also addresses group requests, i.e., requests for information relating to a group of taxpayers that cannot be individually identified. It stipulates that the foreseeably relevant condition does not apply in this situation but describes a common set of characteristics that needs to be met instead.

Other issues

Finally, the proposal also seeks to expand the scope of automatic exchange of information by adding royalties to the categories of income which are subject to automatic exchange of information by governments, besides the already existing obligation to exchange information on for example employment income, directors fees, income from immovable property, life insurance products and ownership of income from immovable property.

On the use of the information, it is clarified that the information as exchanged can be used for VAT and other indirect tax purposes.

Next steps

The proposal of the Commission will now follow the ordinary legislative procedure in the EU. This involves consultation of the European Parliament and requires final decision making in the Council, requiring unanimity among all 27 EU Member States. Negotiations in preparatory bodies of the EU Council

have already initiated. The German Council Presidency has designated this topic as one of its priorities in the tax area and hopes to conclude the negotiations before year-end.

Implications

The proposed legislation underlines the continued intention of the EU to develop and expand on tax transparency as a means of ensuring tax compliance. The obligation to report income earned through digital platforms and the exchange of such information is aimed at helping Member States receive a full set of information on sellers on the digital platforms. A harmonized framework across the EU for reporting is aimed at increasing legal certainty and providing more clarity to the digital platform operators, who currently may face different reporting obligations in individual countries.

Notably, the reporting obligations are wider than the obligations proposed by the OECD and are not limited to platforms in the EU. Since the obligations extend to platforms facilitating sellers resident in the EU or concerning immovable property in the EU, the impact of the proposal is global. With the proposed entry into effect on 1 January 2022, digital platforms should timely establish due diligence and information collection processes.

Potentially affected companies should follow developments and assess what changes to their processes and technology might be needed to enable reporting of the type contemplated in the proposal.

Similarly, taxpayers should closely monitor the other expansions of administrative cooperation within the EU, including on joint audits.

Endnotes

1. See EY Global Tax Alert, [European Commission adopts package for fair and simple taxation](#), dated 16 July 2020.
2. See EY Global Tax Alert, [OECD releases model rules for data reporting by platform operators for sellers in the sharing economy](#), dated 8 July 2020.
3. See EY Global Tax Alert, [The Latest on BEPS and Beyond](#), dated 15 October 2019.
4. See EY Global Tax Alert, [European Commission opens public consultation into collection and exchange of taxpayer information from digital platform providers](#), dated 17 February 2020.

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