

DAC7 – tax reporting obligations for digital platforms enter into force in Spain

Council Directive (EU) 2021/514 of 22 March 2021 (and DAC7's reporting obligations) has been fully transposed into Spanish law on 31 January 2024 following the publication of Royal Decree 117/2024 in Spain's Official State Gazette (BOE).

Council Directive (EU) 2021/514 of 22 March ("DAC7"), which imposes reporting obligations on digital platform operators in the European Union in order to promote administrative cooperation, was transposed into Spanish law on 31 January 2024 following the publication of Royal Decree 117/2024 of 30 January in Spain's Official State Gazette. The obligations have come into force on 5 February 2024, when the ministerial order regulating the forms to be used to report information has been published.

1. PLATFORMS SUBJECT TO DAC7

Entities that enable sellers to provide certain services or sell goods through a digital platform, such as a website or mobile application, must comply with DAC7 reporting obligations. This includes leasing real estate, providing personal services, selling goods and renting out vehicles.

For example, digital platform operators that enable users to offer or contract cleaning, pet care, repairs or private tutor services are subject to DAC7.

2. DAC7 OBLIGATIONS

In essence, platform operators which are subject to DAC7 must

- a) register as a reporting platform operator;
- b) collect and verify information about the sellers operating on their platforms, about rented real estate (e.g. type of property, its location and how long it is rented for), and find out their Member State of residence;
- c) communicate seller information to the competent authorities of the Member State where the sellers must comply with DAC7 obligations; and
- d) keep a record of the sellers' information for ten years.

3. DEADLINE AND COMPETENT AUTHORITY

Platform operators must comply with DAC7 obligations in Spain when they:

- (i) are resident in Spain for tax purposes;
- (ii) are incorporated under Spanish law;
- (iii) are headquartered or have a permanent establishment in Spain;
- (iv) meet the previous conditions also in another Member State but choose to comply with their DAC7 obligations in Spain; or
- (v) do not meet the previous conditions (i.e. they are not a European platform operator), but enable others to carry out the abovementioned activities (leasing real estate, providing personal services, selling goods and renting out vehicles) in a Member State and are registered in Spain as an operator.

Platform operators must register when they start operating, and must communicate changes to their registration status or deregistrations within one month of them occurring. They must report information about sellers and transactions annually in January of the year following that to which the information relates.

However, the first report must be filed within two months of the entry into force of the ministerial order regulating registration and the forms to be used to report information, with information relating to 2023, which includes form 040 “Census statement of registration, modification and deregistration in the register of non-qualified foreign platform operators and in the register of other platform operators obliged to report information” and form 238 “Information statement for platform operators to report information” and establishes how and when these forms must be filed.

4. CONSEQUENCES OF LACK OF COMPLIANCE WITH DAC7 OBLIGATIONS

Not complying with DAC7 obligations is a tax infringement that could be punished with a fixed economic fine, provisional deregistration from the Platform Operator Register or the closure of the seller’s account with the platform operator – who will be prohibited from registering on the platform again or whose payments will be withheld until the information requested is provided.

For example, the lack of collection and verification of the sellers’ information is punishable with a fixed fine of EUR 200 per seller (whose DAC7 obligations are not complied with).

5. CONTACT LAWYERS



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