



Business Tax alert Belgium

New EU tax reporting obligations for digital platforms implemented

On 15 December 2022, the Belgian Chamber of Representatives approved [legislation](#) amending the Income Tax Code to implement new EU reporting obligations for digital platforms as from 1 January 2023. Draft legislation imposing new obligations for payment service providers as from 1 January 2024 is expected to be presented to parliament by the end of January 2023.

Background

The taxation of the digital economy increasingly has been under widespread scrutiny. At the European level, concerns about the lack of compliance of sellers and service providers active both on and off digital platforms have led to different legislative initiatives to put in place measures to ensure the collection, reporting, and sharing of information on digital economy activities within and between EU member states. In this respect, the Council of the European Union has formally adopted directives imposing reporting obligations both for platforms ([Council Directive \(EU\) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation](#), also referred to as “DAC 7”) and payment service providers ([Council Directive \(EU\) 2020/284 of 18 February 2020 amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers](#), known as the Central Electronic System of Payment information (CESOP)).

The first legislative act to implement the new obligations under DAC 7 in Belgium has been approved by parliament and amends the current article 321quater et seq. of the Income Tax Code. The legislative proposal to amend the VAT Code in respect of CESOP is expected to follow in the first quarter of 2023.

This alert provides a timely summary of the key points organisations need to take into account when preparing for the upcoming obligations.

DAC 7

DAC 7 essentially imposes new reporting obligations in Europe for both European and non-European digital platform operators. In principle, a digital platform operator is required to comply with the new reporting obligations when the following conditions are met:

- The digital platform operator is a resident of an EU member state, or if not resident in an EU member state, facilitates the carrying out of a relevant activity (see below) by EU based sellers or service providers;
- The sellers or service providers that actively use the platform are resident in the EU; and
- The sellers/service providers perform one or more of the following relevant activities:
 - Rental of immovable property;
 - Sale of tangible goods;
 - Provision of personal services; or
 - Rental of any mode of transport.

EU platform operators are required to comply with the reporting requirements only in their state of residence, while non-EU platform operators may register in a member state of their choice.

The DAC 7 legislation subjects digital platform operators to a range of new obligations. They are required to:

- Collect certain information related to the seller or service provider and the transactions performed on the platform. This information must be submitted to the local tax authorities by 31 January of the year following the year to which the information relates. As the first year within scope of DAC 7 is the calendar year 2023, the first reporting deadline is 31 January 2024;
- Perform due diligence procedures to verify seller and service provider information. These procedures must be complied with at the latest by the end of the reportable period (i.e., 31 December 2023 for calendar year 2023). A grace period is granted for sellers and service providers that were already registered on the platform before the entry into force of DAC 7; and
- Enforce prescribed sanctions against sellers and service providers who do not provide information requested from them during the due diligence procedures.

Implementation in Belgium

The Belgian law generally follows the EU directive with respect to the content (i.e., scope of activities, due diligence procedures). However, the Belgian law is not limited to reporting jurisdictions in the EU but extends the application of the directive to sellers and service providers that are resident in jurisdictions located outside the EU specified in a list to be drawn up by the Belgian authorities.

Platform operators are required to maintain a register containing the steps taken and the information gathered for due diligence purposes and to satisfy their reporting obligations to the Belgian tax authorities. When performing due diligence, the interpretative guidance to the law explains that the following sources may be consulted to verify the tax identification number (TIN):

- [European Commission TIN on-the-web: TIN online check module](#)
- [OECD Automatic Exchange Portal: Tax identification numbers](#)

For Belgian purposes, the [Crossroads Bank for Enterprises](#) register (Kruispuntbank van Ondernemingen (KBO)/Banque-Carrefour des Entreprises (BCE)) may also be used.

The Belgian legislation provides for penalties in the case of noncompliance that generally range from EUR 1,250 to EUR 50,000.

The implementation of DAC 7 into Belgian law means that the pre-existing reporting obligation for platforms to report revenues made by service providers since 2021 (old article 321^{quater} of the Income Tax Code) ceases to exist when the implementing law on DAC 7 comes into force. However, it must be remembered that for income obtained in 2022, in scope digital platforms still need to comply with the old legislation and 31 March 2023 reporting deadline.

CESOP

The CESOP legislation imposes new obligations for payment service providers (PSPs) established in the European Economic Area (EEA) to keep records and report details of certain cross-border payments. The goal is to give EU member states access to more and better information to ensure compliance with VAT regulations by actors in the digital economy.

Entities in scope

Non-public PSPs are within the scope of the obligation, which broadly coincides with the requirement for a payment license under the [EU payment services directive](#). This includes fully licensed banks, credit card providers, and electronic money institutions but can also include platform operators or marketplaces which collect money on behalf of others and therefore often have a payment license.

Reportable transactions

PSPs will have to transmit information relating to beneficiaries who receive more than 25 cross-border payments per quarter from payers located in the EU. In some cases, the payer's PSP will not need to report a transaction already reported by the payee's PSP.

Records and reporting

PSPs will be required to keep records for a period of three calendar years. PSPs will also be required to report the relevant data on a quarterly basis in their home EU member state and in one or more host member state(s). Reporting will be made electronically.

Implementation in Belgium

A proposal for implementation in Belgium is expected in the first quarter of 2023 and the new rules will enter into force on 1 January 2024.

Impact

The compliance burden for European digital platform operators and payment service providers is likely to increase significantly as a result of these two legislative developments. Affected businesses need to be proactive to ensure that they are adequately prepared for the new administrative requirements since they are likely to have implications for the terms of agreements with service providers and existing information technology processes. Careful consideration should also be given to the potential interaction with other areas of law, such as the [general data protection regulation](#) (GDPR), when the information collected concerns individuals.

Broader developments

The developments above are part of a broader trend whereby governments are increasing their focus on the taxation of the digital economy. Several jurisdictions across the globe have introduced digital services taxes or specific VAT rules for digital services or goods sold via e-commerce. Meanwhile, the OECD has progressed significantly on the Pillar Two initiative and discussions on the Pillar One initiative are also progressing. The Council of the European Union formally adopted Pillar Two on 16 December 2022, ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the EU. Finally, the European Commission is working on an initiative around the VAT treatment of the platform economy as part of the "[VAT in the digital age](#)" proposal launched by the Commission on 8 December 2022.

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