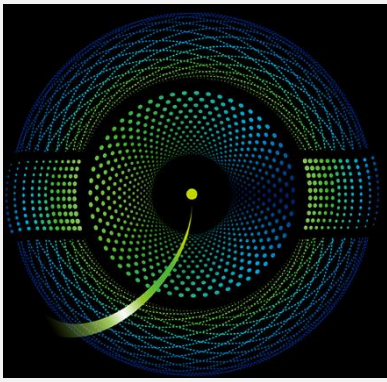

Indirect Tax I VAT

October 2023

OECD updates FAQs on Model Reporting Rules for Digital Platforms

Clarification frequently asked questions on the reporting obligations for platform operators

Recently, the OECD has published an updated version of its FAQs document. The answers in this document are relevant in relation to the DAC7 rules that the Netherlands and other EU Member States have implemented and entered into force on 1 January 2023.

Background

The Dutch legislator mentioned in the parliamentary history that it will follow the current and future interpretation of the OECD regarding the reporting obligations rules and definitions for the Dutch DAC7 implementation unless the OECD guidance explicitly is contrary to the provisions from or the intention of EU legislation regarding DAC7.

The OECD communicated that it would regularly publish updates of the list of FAQs on the application of the MRDP. The first list of FAQs has been published in January 2023. The updated list was published in October 2023. The questions were received from business and government delegates. The FAQs contain three sections. In a previous alert we highlighted the most important answers. In this alert we discuss the most important answers of the updated FAQs below.

For clarity's sake, it should be emphasized that the EU has not opted for the introduction in the DAC7 legislation of a turnover threshold of EUR 1 million for a Platform Operator in order to be an Excluded Platform Operator.

1. Definitions

Coverage of pre-recorded digital content and pre-scheduled activities under Personal Services

A Reporting Platform Operator may presume that every time- or task-based service facilitated through a Platform of a Reporting Platform Operator are Personal Services. However, this presumption is rebuttable if it can be established that the services cannot be adapted to specific time or content requirements of a user.

In principle a composite supply of services which contains elements of Personal Services and other services must be reported if it is not possible to differentiate Personal Services from other services unless the Personal Service part is purely ancillary.

Reporting Platform Operator acting as counterparty (buyer)

The website of a business that exclusively facilitates the buying-in of goods or services from users, is not a Platform. However, in case the Reporting Platform Operator purchases goods or services from a Seller aiming to fulfill the existing request of another user, this is considered to be a 'indirect' Relevant Activity and must be reported.

Circumstances under which the remuneration is known or reasonably knowable

The OECD confirms that in case a Platform subcontracting the processing of payments to a third party and the IT systems of the Reportable Platform Operator or its subcontractor captures information on the amount of payment agreed between Seller and user, this remuneration is known or reasonably known and therefore reportable.

Also, list price posted by a Seller constitutes a remuneration if the Reporting Platform Operator knows about the execution of the transaction and it is known or reasonably known by the Reporting Platform Operator that the list price is also the final price paid for the Relevant Activity.

Indirect rental of immovable property

Similar to a food delivery platform buying-in the services of a third-party Seller to deliver food to its users in its own name, an accommodation rental platform making available immovable property in its own name on behalf of third-party sellers is considered to be a Platform. These rentals would be treated as Relevant Activities, provided that all other components of the Platform definition are met. The Reporting Platform Operator must report the remunerations in those instances.

E-commerce service providers

Software that facilitates the design, maintenance and operation of merchant websites and offers a variety of associated services, e.g., payment functions and back-office support is not a Platform as it does not connect Sellers with users for the supply of a Relevant Activity.

2. Due diligence procedures

Verification of Seller information

Regarding determine whether the Seller's information is correct all information available to the Reporting Platform Operator conducting the due diligence procedures and other Platform Operators of the Platform, as well as any third-party service providers, as well as any governmental service to electronically validate TINs, should be taken into account.

Specifically, with respect to TINs of its Sellers, the Reporting Platform Operators should not only make use of its own records (or electronically searchable records), but also any publicly available automatic checking tools that permit the validation of the TIN or its structure. However, there is no expectation that the Reporting Platform Operator further verifies the reliability of the TIN by collecting additional information or documents that are not already available to the Reporting Platform Operator in its own records or that of its third-party service providers.

3. Reporting requirements

Treatment of vouchers for reporting purposes

From the first version of the FAQs (FAQ #10 to section 'definitions') it was understood that the sale of intangible assets or goods, such as energy rights or vouchers, would not be captured by the term "goods". With regard to vouchers, this answer is not in line with earlier explanations made by the Dutch legislator. Although we expected that the Dutch legislator would give a reaction on this topic, so far this has not been the case. Some further elaboration is given in the updated FAQ #6 of section 'Reporting requirements'.

On questions how transactions involving vouchers reflecting rights to redeem goods or services that are Relevant Activities should be treated for reporting purposes, the answer is that the issuance of a voucher reflecting the commitment of the Seller to provide a Relevant Activity (similar to a receipt or booking confirmation) should be treated as the supply of a Relevant Activity, of which the remuneration is reportable at the time of payment for the voucher.

Further, there may be instances where vouchers are issued by a Reporting Platform Operator, which may later be used as remuneration via its Platform in exchange for the supply of Relevant Activities. In such instances, the redemption of the voucher should be treated as the

payment of Consideration in exchange for a Relevant Activity.

Although we understand why the sale of vouchers should in certain cases be treated similar to the sale of the underlying service or product, we find it difficult to reconcile the comments to the answer provided for FAQ #10, which states that the sale of intangible assets or goods, such as energy rights or vouchers, would not be captured by the term “goods”.

There is no clear definition on which vouchers trigger a reporting requirement. Exceptions may apply, though the definition to a large extent appears to align with single purpose voucher (SPV) and multi purpose voucher (MPV) concepts as known for EU VAT purposes. We also understand that this aligns with the Dutch tax authorities’ interpretation. In that interpretation, the (facilitation of the) sale of a single purpose voucher (SPV) would qualify as a reportable activity if the voucher can be redeemed against a reportable activity, while the sale of a multi-purpose voucher (MPV) would not be reportable. Consequently, businesses facilitating the sale of vouchers through software become responsible to determine whether the voucher qualifies as a SPV, or an MPV. Furthermore, in case the voucher qualifies as a SPV, the Platform Operator should determine whether the underlying product/service qualifies as a reportable activity. However, the OECD does not go into further detail on this topic, which makes it hard for Platform Operators to determine their exact reporting obligations.

In practice both determinations are often not monitored by Platform Operators as they only facilitate the sale (as a disclosed agent). This change in the OECD guidelines therefore has a huge impact on Platform Operators and will lead to a lot of questions in practice. We hope that the Dutch legislator will publish further policy to assist businesses in this regard, as both over- and underreporting may be a risk.

Treatment of barter transaction

Transactions involving Relevant Activities for in-kind remuneration are presumed to be in scope for reporting, on the condition that where the amount of the remuneration (i.e., the value of the in-kind payment in the local currency) is known or reasonably knowable by the Reporting Platform Operator.

Use of local currencies

A jurisdiction is allowed to introduce the threshold amount in its local currency equivalent. For the EU Member States this relates to Sellers for which the Platform Operator solely facilitated less than 30 sales of goods amounting to a total remuneration of EUR 2,000 per year.

Reporting on multiple parties jointly registered as Sellers

In cases where multiple parties are jointly registered as Seller, each party should be reported upon as a Reportable Seller. In cases where a party is

registered as a Seller in the capacity of agent (e.g., a key company acting on behalf of the owner of rented immovable property or an agency selling goods for its clients), and the client of the agency is also registered as a Seller, the Platform Operator should only report the client as a Reportable Seller.

We are glad that the OECD has offered a confirmation of answers provided earlier by the Dutch legislator and the tax authorities. However, we see that some answers are diverging from the Dutch perspective and are curious whether the Dutch tax authorities will change their point of view.

How we can help

If you have any questions regarding the above, please contact your tax advisor.

Get in touch with our experts below or find more on our VAT services via deloitte.nl.

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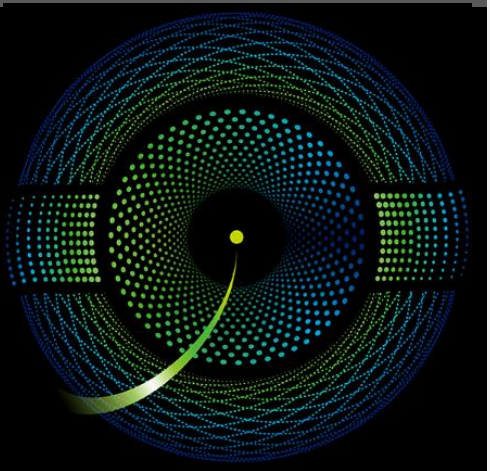

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