



The DAC 7 (finally) transposed into Luxembourg law – Are you ready?

On 3 May 2023, the Luxembourg Parliament voted the law transposing Directive (UE) 2021/514, the so-called DAC 7 (“the DAC 7 Law”). The main goal is to extend automatic exchange of information obligations to digital platforms regarding their clients, selling goods or services through those platforms. A first reporting in respect of 2023 is due by 31 January 2024.

Apart from that, the DAC 7 law introduces, amongst others, a framework for joint EU tax audits and extends the data protection notifications under the CRS and DAC 6 Laws.

Platform operators should register or notify

Both EU and (under certain circumstances) non-EU digital platform operators (“the DPOs”) active in Luxembourg, need to register with, or notify the Luxembourg tax authorities (the “LTA”) about being exempt before 31 December 2023 (unless a DPO was entitled to, and did register in another EU Member State).

Due diligence and reporting obligations

Registered DPOs (“Reporting DPOs”) are subject to due diligence and reporting obligations in respect of their clients: they are obliged to collect, verify and report to the LTA identification data and data about the activities of individuals and entities selling goods or services through those platforms.

The DAC 7 Law also imposes that reportable individuals must be notified in advance of the reporting, and that the notification must contain the reportable data.

The reportable information in respect of the reporting year should be filed by the reporting DPOs before 31 January of the year following the reporting year, with a first reporting in respect of 2023 being due by 31 January 2024.

In turn, the LTA will transmit the reportable data to the competent tax authorities of the relevant EU Member States by 31 March of the year following the year of the reporting.

Similar to reporting financial institutions under the Luxembourg CRS and FATCA Laws, reporting DPOs have the obligation to put in place policies, controls, procedures and IT systems, including registers of actions.

Verifications by the LTA and penalties

In monitoring compliance with the provisions of the DAC 7 Law, the LTA have the right to request access to the reporting, registers of actions, implemented policies, controls, procedures and IT systems as well as the right to request and receive access to documents and information received as part of the customer due diligence.

Under the Law, the LTA may impose on a DPO penalties of EUR 5.000 for failure to register/to notify of exempt status and/or failure to report before the legal deadline. In addition, following audits by the LTA, a DPO can be subject to a penalty up to EUR 250.000 for non-compliance with due diligence and reporting rules or other obligations implemented by the DAC 7 Law, including internal processes and retention of registers of actions.

Other important amendments: joint tax audits framework and extension of notification obligations under the CRS and DAC 6 laws

The DAC 7 Law introduces the framework for joint tax audits of the LTA and tax authorities of other EU Member States. This will facilitate cooperation between the tax authorities of the EU Member States regarding such joint cross-border audits.

It is also important to note that the DAC 7 Law contains a modification regarding the Luxembourg CRS Law and DAC 6 Law in respect of data protection obligations. Specific data protection notifications towards protected individuals become mandatory before the reporting takes place (i) on a recurrent basis, and (ii) should include the data to be exchanged.

Entry into force

Luxembourg has been late with the transposal of the DAC 7, which should have been completed by 1 January 2023. The Law was voted on 3 May, and the exemption from the second constitutional vote by the State Council followed on 16 May. The DAC 7 Law enters into force with a certain retroactive effect up to 1 January 2023 (except the joint tax audit provisions, entering into force as from 1 January 2024).

Assistance needed ?

Should you need assistance in respect of DAC 7 Law, please do not hesitate to be in touch with your usual Mazars contacts, or the specialized Financial Services Tax team members listed below.

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