

## New tax obligations come into force for *Market Place* platform operators.

### KEY POINTS

- ▶ The entities affected by this rule are those that facilitate the provision of certain services or the sale of goods by sellers through a digital platform, website or mobile application. By way of example, a platform that allows users to sell or exchange goods, hire personal services of any kind such as classes, cleaning, repairs, personal care, etc., or the sale or lease of real estate or motor vehicles.

### WHAT DOES IT CONSIST OF?

- The rule applies to so-called market places or platforms that connect sellers and customers.
- Obligation to provide information about sellers who use the platform, with some exceptions.
- Information about sellers: activities carried out; consideration and identification of financial accounts used for collection; taxes, commissions, fees and other amounts withheld or charged by the operator, among others.
- Activities subject to obligation: sale of goods, personal services, leasing of real estate or motor vehicles.

### WHAT OBLIGATIONS DOES IT ENTAIL?

- Platform operators are required to register in the census (form 040 created ad hoc) in the Specific Register of Platform Operators created for this purpose.
- Form 238 is approved for the communication of information on sellers by platform operators. This declaration is filed during the month of January of each financial year.
- For the 2023 financial year, the deadline is extended until April 6, 2024.
- A specific penalty regime is established.

## WHAT IS DAC 7?

On 30 January, Royal Decree 117/2024 was published, which develops the due diligence rules and procedures for platform operators in the field of mandatory automatic exchange of information derived from Directive 2011/16/EU (amended in 2021) on administrative cooperation in the field of taxation (DAC7).

The purpose of this directive is to extend administrative cooperation to address the challenges posed by the digitalization of the economy and to help tax administrations collect taxes in a better and more efficient way.

The incorporation of the mandate of this Directive by means of this Royal Decree implies that platform operators (via web, App, etc.) are subject to certain due diligence rules and procedures that must be applied with respect to those considered to be "sellers", in order for the latter to provide certain data to operators so that they, in turn, can comply with the reporting obligation with respect to the Tax Administration.

## WHAT PLATFORMS DOES IT APPLY TO?

The platform operators subject to these obligations in Spain are those that have a connection point in Spain. Specifically, it applies to those operators who:

- have their tax residence in Spain;
- are constituted in accordance with Spanish law;
- have their registered office or a permanent establishment in Spain;
- are in any of the above cases in Spain and in another Member State of the European Union and choose Spain as the Member State in which to comply with the obligations imposed by the DAC7; or
- without being included in any of the above cases (i.e., that it is a non-European platform operator), that facilitate the performance of the referred in a Member State and are registered in Spain as an operator.

"Reporting platform operators" shall collect and verify the identification data of sellers using their platforms, with the seller's residence data being particularly relevant, as it determines the jurisdiction to which the information will be transmitted. For their part, sellers will be subject to the obligation to communicate such data to the operators, with important

consequences in the event of non-compliance such as the closure of the seller's account with the platform operator, inability to re-register on the platform or withholding payment of the consideration until the requested information is provided.

Failure to comply with the obligations imposed by this Royal Decree implies the commission of tax offences with the corresponding imposition of severe penalties, the precautionary removal from the Census of Platform Operators, in addition to the consequences for the seller who fails to comply with their obligation to notify the platform.

## ENTRY INTO FORCE

Due diligence rules and procedures apply retroactively from 1 January 2023. The first informative return by platform operators must be submitted within two months of the entry into force of the ministerial order regulating the model, with respect to the information relating to the immediately preceding year. Since the Order approving the models came into force on 6 February, the deadline for reporting data for 2023 ends on 6 April 2024.

## NEXT STEPS

Considering the deadline for declaring the 2023 data on April 6, we recommend a detailed analysis of the regulation to determine if your company may be affected by the entry into force of these obligations or if any of the cases of exemption or non-subjection apply to you.

At RSM we have been at the forefront of assisting multiple platform operators to navigate these complex DAC7 regulations. Our involvement has ranged from implementing DAC7 frameworks to conducting DAC7 compliance checks, providing global support and offering specialized DAC7 filing services. Our experience has provided us with a deep understanding of the nuances involved in complying with these regulations.

RSM specialists will be happy to support your business in the implementation of these rules, sharing their expertise and tools.

For more information, please contact your RSM Tax Specialist.