

Fiscal news regarding the DAC7 reporting obligations



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Fiscal news regarding the DAC7 reporting obligations

Amendments in brief:

On January 31, 2023, the Ordinance no. 16/2023 for the amendment and completion of Law no. 207/2015 regarding the Fiscal Procedure Code was published in the Official Gazette no. 86.

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Amendments explained in more detail:

Keywords:

- The digital platform operators
- The obligation to report

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- ❖ On January 31, 2023, the Government Ordinance no. 16/2023 for the amendment and completion of Law no. 207/2015 on the Fiscal Procedure Code was published, transposing the provisions of Council Directive (EU) 2021/514 of March 22, 2021 amending Directive 2011/2016/EU on administrative cooperation in the fiscal field.
- ❖ The Government Ordinance no. 16 introduces the obligation for *digital platform operators* to report to NAFA information about active sellers on their platforms.
- ❖ *The digital platform operators* who fall under the following situations are required to report:

- The Qualified platform operator outside the European Union

- Rental of real estate

- Provided services

- Sale of goods

- Renting means of transport

- The reportable sellers

- January 31 of the year following the calendar year

- January 31, 2024

a) *have the tax residency in Romania or in another member state or when they do not have the tax residency in Romania or in another member state, but meet the following conditions:*

- i. *are constituted according to the legislation of Romania or another member state;*
- ii. *have the seat of effective management in Romania or another member state;*
- iii. *have a permanent seat in Romania or another member state and are not Qualified Platform Operators from outside the Union.*

b) *do not have the tax residency, are not established or administered in Romania or in another member state, nor do they have a permanent establishment in Romania or in any other member state, but they intermediate the performance of a relevant activity by Reportable Sellers or a relevant activity that involves renting real estate located in Romania or another member state and are not Qualified Platform Operators from outside the European Union.*

❖ *The reporting obligation is established for the following activities:*

- a) *renting real estate, including residential and commercial, as well as any other real estate and parking spaces;*
- b) *a personal service = any service provided by one or more individuals acting either independently or on behalf of an entity carried out at the request of a user either online or physically offline, after having been facilitated via a Platform;*
- c) *sale of goods;*
- d) *renting means of transport.*

❖ *The digital platform operators have an obligation to report reportable sellers who are registered on the platform during the reporting period, regardless of whether they are natural or legal persons, and who carry out activities through a platform that generate the reporting obligation.*

❖ *The digital platform operators who are required to report must register with the competent authority in Romania or any other member state in order to comply with fiscal due diligence and reporting procedures.*

❖ *The digital platform operators have the obligation to report by the date of January 31 of the year following the calendar year in which the Reportable Seller is identified.*

❖ *According to the provision of Government Ordinance no. 16/2023, the first reporting deadline is January 31, 2024, including information on Reportable Sellers related to 2023.*

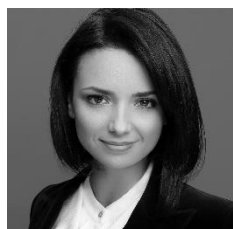
❖ *If a reportable seller does not provide the information requested by the platform operators even after the second warning, but not before 60 days from initial request, the platform operator has the obligation to*

- **Contravention**

- 20,000 lei – 100,000 lei

close the seller's account and no longer allow him to register or to withhold the payment of the consideration to the seller during the period in which he does not transmit the requested information.

- ❖ The Platform Operators having reporting obligations must register with the competent authority in Romania within 90 days from the entry into force of the ordinance.
- ❖ The following are considered, inter alia, as *contraventions* with respect to the fiscal due diligence and reporting obligations of the Platform Operators:
 - non-reporting, late reporting or incorrect or incomplete reporting;*
 - non-compliance with fiscal due diligence and reporting procedures;*
 - failure to comply with the obligation to register with the competent authority in Romania or another member state;*
 - non-compliance with the obligation to close the Seller's account and not to allow him to register again on the platform or to withhold the payment of the Consideration to the Seller, as long as the Seller does not provide the requested information within the term provided by the law;*
 - non-compliance with the obligation to keep records of the measures undertaken and any information based on which they carried out the fiscal due diligence and the reporting procedures;*
 - failure to comply with the obligation to inform the competent authority in Romania regarding any changes to the reported information when the platform operator chooses to register in Romania;*
 - non-compliance by providers of electronic communications networks or services of the obligation to stop access to the website or application of the Platform Operator who has the obligation to report, at the request of the competent authority in Romania;*
 - non-compliance by the platform operators with the obligation to notify the providers of electronic communications networks or services regarding the fulfillment of the registration obligation, in order to restore access to the Platform Operator's website or application;*
 - preventing the verifications and controls necessary to comply with fiscal due diligence procedures and reporting procedures.*
- ❖ The sanctions applicable for the contraventions related to non-compliance are between 20,000 lei and 100,000 lei.



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