



Tax Flash February 2023

DAC7, the mutual agreement procedure and joint audits

On 31 January 2023, Government Ordinance no. 16/2023 amending and supplementing Law no. 207/2015 on the Fiscal Procedure Code was published in the Romanian Official Gazette.

The most important changes introduced by Government Ordinance no. 16/2023 include the integration of the DAC7 European Directive into national legislation and the introduction of provisions regarding joint audits and the mutual agreement procedure applicable as a result of the ratification of the Multilateral Convention.

1. Implementation of the DAC7 European Directive on reporting obligations for platform operators

New reporting obligations are introduced for certain types of activities and certain types of digital platform operators (with some exceptions).

❖ Platform operators with reporting obligations:

- a) entities that have their tax residency, are registered or administered, or have a permanent establishment either in Romania or the European Union;
- b) entities facilitating the performance of activities subject to reporting, including those involving the rental of real estate located in Romania or another member state, even if these entities do not have tax residency, are not registered or administered, or do not have a permanent establishment in Romania or the European Union (certain exceptions apply in the case of operators of digital platforms established in a non-EU jurisdiction with equivalent reporting obligations).

❖ Activities subject to reporting:

- a) the rental of immovable property, including residential and commercial property, as well as any other immovable property and parking spaces;
- b) personal services (defined as time- or task-based work performed by one or more individuals, carried out at the request of a user, after having been facilitated by a platform);
- c) the sale of goods;
- d) the rental of any means of transport.

Note: for reporting purposes, the term "platform" means any software, website or application (including mobile applications) accessible to users and which allow reportable sellers to be connected to users for the purpose of carrying out reportable activities. However, platforms only having the purpose of (i) processing payments in relation to reportable activities, (ii) listing or advertising reportable activities, or (iii) redirecting users to a reportable digital platform are exempt from reporting.

❖ Reportable sellers may be individuals or entities registered on the platform that are resident in Romania or another member state or that have offered for rent real estate located in Romania or another member state, with the following exceptions:

- government entities;
- entities whose shares are regularly traded on a regulated market or affiliated entities thereof;
- entities for which the platform operator has facilitated over 2,000 real estate rental operations;
- entities for which the platform operator facilitated fewer than 30 operations consisting of sales of goods and for which the total value of the consideration paid or credited did not exceed the value of EUR 2,000 during a reporting period.



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❖ Reporting obligations

The operators of digital platforms subject to reporting will have to periodically submit information regarding reportable activities carried out by sellers subject to reporting, including the seller's legal name/full name, their primary address/headquarters, tax identification number, VAT code, Trade Register registration number and financial account identifier, as well as details of the consideration paid for the reportable activities, including commissions and fees withheld by the platform operator.

For sellers providing real estate rental services, the report will also include information relating to the listed real estate, such as the address, land registry number, consideration received for each real estate listing, number of rental days during the reporting period etc.

Note: If several platform operators are obliged to report the same type of information, a platform operator may be exempted from reporting if it is able to demonstrate that the reportable information has already been reported by another platform operator.

❖ Reporting deadlines and fines:

The reporting period for transactions covered by DAC7 begins on 1 January 2023.

The legal deadline for reporting information is **31 January** of the year following the calendar year in which the seller is identified as a reportable seller.

For reporting purposes, digital platform operators without a legal or fiscal presence in the EU will be obliged to register in Romania or another EU member state. In the event an operator does not register within the legal timeframe, the competent authority will ask the providers of electronic communication networks or services to restrict access to the operator's website or application until the registration obligation has been fulfilled.

A series of contraventions are introduced pertaining to failure to comply with reporting obligations. These are punishable by fines ranging between RON 20,000 and 100,000.

2. Joint audits

Government Ordinance no. 16/2023 introduces legal provisions relating to the joint auditing of one or more persons at the request of one or more member state.

Under these new provisions, the authority contacted in Romania must respond to a joint audit request within 60 days of receipt thereof and may only turn down a request on well-founded grounds.

In the case of a joint audit carried out in Romania, the officials appointed by other member states may interview people and examine records as well as evaluate the evidence collected during the audit together with officials of the authority in Romania.

Moreover, the person(s) subject to a joint audit will benefit from the same rights and have the same obligations as in the case of an audit performed only by Romanian officials, including in respect of any procedures relating to complaints, re-examinations or appeals.

Following the performance of a joint audit, the competent authorities of the member states involved will reach an agreement on the fiscal situation of the audited person(s), which will be recorded in a final report to be communicated to the audited person(s) within 60 days of its issuance.



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3. Mutual agreement procedure applicable further to the ratification of the Multilateral Convention

Government Ordinance no. 16/2023 introduces changes regarding the mutual agreement procedure applicable between Romania and another state with which Romania has concluded a convention or an agreement on the avoidance of double taxation as a result of the ratification of the Multilateral Convention on the implementation within the framework of tax treaties of measures relating to the prevention of base erosion and profit shifting.

According to the new legal provisions, in the event a taxpayer considers that the measures taken by one or both contracting states has resulted in a level of taxation that is not in accordance with the provisions of the convention or agreement on the avoidance of double taxation, the taxpayer can present their case to the competent authorities of any of the contracting states.

If this possibility is not provided for in the convention or agreement in question, the taxpayer can request that the National Agency for Fiscal Administration (“ANAF”) initiate the mutual agreement procedure.

For the purposes of the mutual agreement procedure, the ANAF will notify the competent authority of the contracting state vis-à-vis the conduct of the procedure or will initiate a bilateral consultation process that allows the competent authority of the other state to present its views on the subject of the mutual agreement procedure. The ANAF will also carry out a mutual agreement procedure if requested by another state with which it has concluded a convention or an agreement on the avoidance of double taxation.

The procedure is applicable to requests submitted starting with the date on which the provisions of the Multilateral Convention ratified by Law no. 5/2022 enter into force or after this date in the case of treaties concluded by Romania with other states that include the possibility for taxpayers to present their case to the authority of any contracting state.

Source: Ordinance no. 16/2023 amending and supplementing Law no. 207/2015 on the Fiscal Procedure Code.

This newsletter is a service of TPA.

Kind regards,
Your TPA Team



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