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A proportionality assessment

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Tax Reporting by Digital Platforms under DAC7: A Proportionality Assessment

Juan Manuel Vázquez



Tax Reporting by Digital Platforms under DAC7: A Proportionality Assessment

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Abstract

Tax Reporting by Digital Platforms under DAC7: A Proportionality Assessment

Digital platforms facilitate a large number of economic transactions and, owing to their prominent role in connecting different sides of the market, they hold valuable information about their users and their transactions. The information platforms have about their users is particularly useful for the correct functioning of tax systems as it concerns sellers (i.e. taxpayers) using such interfaces to carry out economic activities and earn taxable income. Since, without the collaboration of digital platforms, the income earned by sellers in the sharing and gig economy is not always visible to tax administrations, nor is it self-reported by these taxpayers, opportunities for tax evasion have arisen within the latter economic sector. To address this issue, in the past few years, governments around the globe have started ‘deputizing’ private platforms by involving them in their fight against tax evasion. The collaboration of private platforms in this regard has been materialized through different policy approaches, which include voluntary and mandatory measures aiming to either improve taxpayers’ education and encourage self-reporting, ensure third-party reporting of sellers’ data to tax authorities, or, in some cases, even the collection and remittance of sellers’ taxes.

Inspired by the work the OECD carried out at the global level, in early 2021, the European Union (EU) adopted new tax transparency rules, providing an EU-standardised tax reporting requirement for digital platforms. These new rules were introduced through a sixth amendment to Council Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7). In a nutshell, these rules require third-party operators of digital platforms to systematically collect, verify, store, and report to the tax authorities of the Member States specific personal and transactional data regarding their sellers. Such information is then automatically exchanged between EU tax authorities.

Despite the existence of a clear public interest behind the ‘deputization’ of private platforms and the generalized acceptance of tax information reporting (data sharing) by third-party intermediaries to combat tax evasion, the introduction of specific tax reporting requirements under DAC7 has raised a significant concern, which to date, has neither been given sufficient attention nor has it yet been comprehensively addressed by scholars. This concern refers to whether DAC7 rules for digital platforms are a proportionate public measure.

While it is evident that DAC7 rules pursue a worthy goal (e.g. combating tax evasion) that would *prima facie* justify a public intrusion into the private sphere of both platform sellers and third-party platform operators, the question that arises in this regard is whether such intrusion does not go beyond the degree that it is necessary in the public interest. Such a question essentially entails a matter of ‘means’ and ‘ends’ or, in other words, of proportionality.

This study aims to provide a comprehensive and in-depth assessment of the proportionality of DAC7 rules for digital platforms from a legal and tax policy perspective. In particular, it addresses whether DAC7 rules for digital platforms are consistent with the EU general principle of proportionality from both a policy and a legal perspective and, if this is not the case, what improvements could be introduced to ensure such consistency.

The study demonstrates that while DAC7 is generally a measure consistent with the principle of proportionality in its policy and legal dimensions, it nevertheless has certain specific elements that are not consistent with such a principle and compromise the measure’s balance.

Furthermore, the study makes several short- and medium-term recommendations to address these issues and improve the current version of DAC7 without introducing significant changes to the Directive and respecting the chosen policy option currently embodied therein (namely imposing mandatory and periodic information reporting obligations on platforms). Because of some structural limitations of current tax systems and their inevitable impact on DAC7, the study also makes long-term recommendations to enhance the proportionality of this legal framework, which consist of moving towards an integration of data sharing requirements into the natural systems used by third-party platforms and taxpayers as part of their daily lives and businesses (i.e. an Integrated Data Sharing Model or IDSM).

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Stakeholders participating and financing this project include the private commercial organizations Ernst & Young (EY), Gatti Pavesi Bianchi Ludovici, Loyens & Loeff, Maisto e Associati, Microsoft, Netflix, and NEXI Group. Other organizations financing this initiative are the Dutch Association of Tax Advisers (NOB) and the Dutch Branch of the International Fiscal Association (IFA). Part of the CPT project is also financed by the Netherlands legal research agenda 2019–2025 on Digital Legal Studies, and the project forms part of Amsterdam Law School's ‘Digital Transformation of Decision-Making’ initiative. Other (non-commercial) partners of the CPT project are the University of Cape Town (UCT) from South Africa, the Chulalongkorn University from Thailand, and the tax authority of the Autonomous City of Buenos Aires (AGIP).

For more information about the CPT project and its partners, please visit its website (<https://actl.uva.nl/cpt-project/cpt-project.html>).

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Every PhD journey and experience is unique, and mine is no exception. As an Argentine tax scholar with previous academic and professional experiences in Latin America and the United States, finding a position at a top European university to pursue doctoral research in international and EU tax law was already an ambitious and challenging goal that demanded more than I initially expected. What I did not anticipate when I was finally admitted to the PhD program of UvA was that writing a thesis within a foreign country and culture, in a language other than my own, and concerning legal frameworks which I was initially unfamiliar with, would prove to be the most demanding academic endeavour of my life thus far.

Beyond the high technical standards that a PhD inherently requires, the most difficult hurdles for me were the common challenges that any ambitious, individual, and long-term project usually raises. These include managing self-doubt, sustaining long-term motivation and discipline, handling the isolation that often comes with research, and maintaining confidence and resilience through times of uncertainty.

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I am proud to make a humble contribution to the fields of international and EU Tax Law and trust that my research will inspire others to continue exploring this fascinating field of study.

Amsterdam, 31 October 2024

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