



STATUTORY INSTRUMENTS.

S.I. No. 705 of 2022

MANDATORY AUTOMATIC EXCHANGE OF INFORMATION
(PLATFORM OPERATORS) IN THE FIELD OF TAXATION
REGULATIONS 2022

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(PLATFORM OPERATORS) IN THE FIELD OF TAXATION
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The Revenue Commissioners, in the exercise of the powers conferred on them by section 891I (inserted by section 81 of the Finance Act 2022 (No. 44 of 2022)) of the Taxes Consolidation Act 1997 (No. 39 of 1997), with the consent of the Minister for Finance, hereby make the following Regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Mandatory Automatic Exchange of Information (Platform Operators) in the Field of Taxation Regulations 2022.

(2) These Regulations come into operation on 1 January 2023.

Interpretation

2. (1) In these Regulations –

“authorised DAC officer” has the same meaning as it has in the principal section;

“Commission” means the European Commission;

“Directive” has the meaning given to it by the principal section;

“new seller” means a seller other than a pre-existing seller;

“Member State election” means an election referred to in subsection (3)(b) of the principal section which is made by a platform operator to register in a Member State other than the State;

“pre-existing seller” means a seller that is registered with the platform operator on the later of –

(a) 1 January 2023, or

(b) the date on which the entity becomes a platform operator;

“principal section” means section 891I of the Taxes Consolidation Act 1997;

“return date” means the date referred to in subsection (4) of the principal section.

(2) Unless the context otherwise requires, a word or expression used in these Regulations that is also used in –

(a) the Directive shall have the same meaning as it has in the Directive, or

(b) the principal section shall have the same meaning as it has in the principal section.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 27th December, 2022.*

General requirements

3. (1) A platform operator required under subsection (3)(a) of the principal section to register with the Revenue Commissioners shall do so by the later of –

- (a) 30 November 2023, or
- (b) the last day of the month following the month in which any of the conditions as laid out in subsection (3)(a) are first satisfied.

(2) Where a platform operator makes a Member State election, details of that Member State election shall be submitted in writing to the Revenue Commissioners by the later of –

- (a) 30 November 2023, or
- (b) the last day of the month following the month in which the Member State election is made.

(3) A platform operator required under subsection (3)(c) of the principal section to register with the Revenue Commissioners shall do so by the later of –

- (a) 30 November 2023, or
- (b) the last day of the month following the month in which the condition as laid out in paragraph (ii) of that subsection is first satisfied.

(4) (a) A reporting platform operator (in this paragraph and in paragraph (b) referred to as the ‘first mentioned reporting platform operator’) that is reporting on behalf of another reporting platform operator (in this paragraph and in paragraph (b) referred to as the ‘second mentioned reporting platform operator’) under paragraph A of Section III of Annex V to the Directive shall include in a return required under subsection (4) of the principal section the information set out in subsection (5) of the principal section in respect of both itself and each reporting platform operator on whose behalf it is reporting.

(b) The second mentioned reporting platform operator shall be exempt from reporting information to the Revenue Commissioners under subsection (4) of the principal section if that second mentioned reporting platform operator has –

- (i) proof that the required information has been reported to the Revenue Commissioners by the first mentioned reporting platform operator, and
- (ii) provided the appropriate declaration in respect of the reporting by the first mentioned reporting platform operator in the annual return required to be made in accordance with subsection (4) of the principal section.

Reporting of consideration

4. (1) A reporting platform operator required to satisfy the obligations as laid out in subsection (4) of the principal section shall, subject to paragraph (2), report all consideration in the fiat currency in which the consideration has been paid or credited.

(2) For the purposes of making a return under subsection (4) of the principal section, where consideration paid or credited to a reportable seller is in a form other than fiat currency, it shall be reported in euro, converted or valued in a manner that is consistently determined by the reporting platform operator.

(3) For the purposes of subsection (5) of the principal section, the information relating to the consideration and other amounts shall be reported in respect of the quarter of the reportable period in which the consideration was paid or credited.

(4) For the purposes of this regulation, information relating to consideration which has been withheld under subsection (7)(b)(i)(I) of the principal section shall be included in the quarter of the reportable period in which the consideration would have been paid or credited if subsection (7)(b)(i)(I) of the principal section did not apply.

Non-compliance by a reportable seller

5. Where a reportable seller has failed to provide the relevant information to a reporting platform operator such that paragraph (b) of subsection (7) of the principal section applies, the reporting platform operator shall -

- (a) implement procedures to ensure that no consideration shall be paid or credited to that reportable seller in accordance with subsection (7)(b)(i)(I) of the principal section;
- (b) take all reasonable and appropriate steps to prevent the reportable seller from connecting with users of the reporting platform operator for the purpose of arranging future relevant activities in accordance with subsection (7)(b)(i)(II) of the principal section, which may include:
 - (i) suspending the account of the reportable seller, and
 - (ii) preventing users from making contact with the reportable seller other than for the purpose of existing relevant activities;
- (c) take all reasonable and appropriate steps to prevent that reportable seller from opening a new account in accordance with subsection (7)(b)(i)(III) of the principal section;
- (d) implement procedures to make payment of any consideration in accordance with subsection (7)(b)(i)(A) of the principal section;
- (e) implement procedures to close the account of that reportable seller in accordance with subsection (7)(b)(i)(B) or (7)(b)(ii)(I) of the principal section;

- (f) take all reasonable steps to prevent that reportable seller from reopening a suspended account or from opening a new account in accordance with subsection (7)(b)(i)(C) or (7)(b)(ii)(II).

Obligation to deliver a return

6. Where a reporting platform operator is required under the principal section or these Regulations to –

- (a) deliver a return, or
- (b) make a declaration or election,

the return, declaration or election shall be delivered or made electronically –

- (i) using such technology as may be approved or provided by the Revenue Commissioners, and
- (ii) in such form as the Revenue Commissioners may require.

Appointment of third parties

7. (1) A reporting platform operator may appoint a person as its agent to carry out the duties and obligations imposed on it by the principal section or these Regulations.

(2) Notwithstanding the appointment of a person under paragraph (1), the reporting platform operator shall –

- (a) at all times, have access to and be able to produce, where so required by an authorised DAC officer, the records and documentary evidence used to identify and report on reportable sellers, and
- (b) be responsible for any failure to comply with the principal section or these Regulations.

Due diligence procedures

8. (1) Subject to this Regulation, a reporting platform operator shall, in order to identify reportable sellers maintained by the platform, apply the due diligence procedures, and comply with the rules, set out in section II of Annex V to the Directive.

(2) A reporting platform operator may with respect to pre-existing sellers, apply the due diligence procedures relating to new sellers as set out in paragraph F of section II of Annex V to the Directive to those pre-existing sellers.

(3) Notwithstanding the fact that a reporting platform operator applies the procedures referred to at paragraph (2) to a pre-existing seller, the rules specified for pre-existing sellers in section II of Annex V to the Directive shall also continue to apply to that seller.

(4) A reporting platform operator shall apply the due diligence procedures relating to the collection of a seller's information as set out in paragraphs B and E of section II of Annex V to the Directive.

(5) In order to verify the reliability of a seller's information collected under paragraph (4) a reporting platform operator shall apply the due diligence procedures as set out in paragraph C of section II of Annex V to the Directive.

(6) A reporting platform operator shall determine the Member State of residence of a seller for the purpose of the Directive by applying the due diligence procedures as set out in paragraph D of section II of Annex V to the Directive.

(7) Where a reporting platform operator has applied the due diligence procedures set out in section II of Annex V to the Directive and there is a change in circumstances that causes a reporting platform operator to know, or have reason to know, that the original documentary evidence or other equivalent documentation with respect to a seller is incorrect or unreliable, a reporting platform operator shall obtain new documentary evidence from the seller.

(8) (a) A seller shall be treated as a reportable seller from the date that seller qualifies as such pursuant to the due diligence procedures in section II of Annex V to the Directive.

(b) Unless otherwise provided for by the principal section or these Regulations, information with respect to a reportable seller shall be reported annually in the calendar year following the year to which the information relates until such time as the seller ceases to be a reportable seller.

(9) A reporting platform operator shall implement arrangements to obtain the information required under the principal section and these Regulations in respect of each seller.

(10) Information obtained by a reporting platform operator solely for the purpose of reporting under the principal section and these Regulations shall not be used for any other purpose.

(11) For the purpose of the timing and validity of the due diligence procedures set out in these Regulations, a reporting platform operator shall apply the procedures set out in paragraph F of section II of Annex V to the Directive.

(12) A reporting platform operator may elect to complete the due diligence procedures as set out in these Regulations to active sellers only, any such election for a reportable period must be provided by the reporting platform operator to the Revenue Commissioners at the time the reporting platform operator is making a return for that reportable period under subsection (4) of the principal section.

(13) (a) A reporting platform operator may rely on the services of –

(I) a third party service provider, or

(II) another platform operator

to fulfil the due diligence obligations imposed on it by these Regulations and the principal section.

- (b) Notwithstanding subparagraph (a) the due diligence obligations imposed by these Regulations and the principal section shall remain the responsibility of the reporting platform operator.

Maintaining records

9. A reporting platform operator shall keep records of the procedures applied and any information relied upon in order to comply with the principal section and these Regulations for a period of 6 years from the end of the year in which the procedures were applied or the information relied upon.

Inspection of records and provision of information and assistance

10. (1) An authorised DAC officer may by notice in writing require a reporting platform operator to furnish them within such time, not being less than 14 days, as may be provided by the notice, with such information (including copies of any relevant books, records or other documents) as they may reasonably require for the purpose of determining whether information specified in a return under the principal section or these Regulations is correct and complete.

(2) An authorised DAC officer may require a reporting platform operator to produce books, records or other documentation and to provide information, explanations and particulars and to give all assistance which the authorised DAC officer may reasonably require for the purpose of the powers and duties conferred on them by subsection (12) of the principal section.

(3) An authorised DAC officer may make extracts from or copies of all or any part of the books, records or other documents or other material made available to them or require that copies of books, records or other documents be made available to them for the purpose of exercising or performing their powers under the principal section or these Regulations.

The Minister for Finance consents to the making of these Regulations.



GIVEN under the Official Seal of the Minister for Finance,
20 December, 2022.

MICHAEL MCGRATH,
Minister for Finance.

GIVEN under my hand,
20 December 2022

NIALL CODY,
Revenue Commissioner.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
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