



Online platforms: major extension of the French reporting obligation

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Context

The current French tax regulation provides several tax compliance obligations for online platforms.

According to French tax code, operators of online platforms must submit a user's activity report:

- to user themselves since 2016;
- and, since 2019, to French Tax Authorities including data on the users as provided by article 242 bis of the EU VAT Directive 2006/112/EC that will enter into force in 2021.

The first declaration to the French Tax Authorities (*hereafter "FTA"*) must in principle be sent **before 31 January 2020** (*one year before the entry into force of the Directive obligation*).

As a broad scope, this obligation relates to platform operators and companies wherever they are established. However, these obligations only apply when users reside in France or make sales or services in France in application of VAT regulation.

Following communications of the French Budget Minister in the context of the fight against VAT fraud, a draft decree was communicated in order to extend the scope of data that platforms must communicate to the FTA: **in this respect, platforms would be required to determine the French VAT taxable turnover relating to transactions carried out by their users.**

Present data scope: determination of the users included within the scope of the obligation

According to annexes of the French Tax Code, the reports provided by the platforms should include:

- its own identification elements (*platform's name, establishment address, VAT number*);
- the identification elements of the users either:
 - for private individuals (*name, id or tax number in some cases, address, ...*);
 - or for business (*name, place of establishment, VAT number and mail*).

In addition, the platform should provide the amount of operations carried out by these users, wherever they are established.

The determination of the user's quality (*individuals or business*) is carried out under the sole responsibility of the user. It was therefore, at the time of law adoption, a limited obligation that did not involve platforms in the processing of data related to the transactions for which they are intermediaries.

However, in order to determine if the platform should communicate these elements to the user and to the FTA, the platform should determine if the user (a) is residing in France or (b) makes sales or services taxable in France for VAT purposes. In this respect, the platforms have an active role in order to determine if the users is carrying out operations within the scope of French VAT.

Extended data scope: determination of some data transferred

In addition to some clerical changes, the recent draft decree implied communication of new data such as the professional user's webpage link or, failing that, his online ID and trade name on the platform.

However, the main change is that **platforms would have to communicate the amount of taxable turnover related to its users transactions subject to French VAT**. Intensifying the platform's administrative liability, this will imply a heavy administrative and technical burden in order to determine the territoriality of each of the operations carried out on the platform.

This means that it is no longer just a question of transmitting data stored into the platform's databases, but of determining the applicable VAT rules and generated its own data. The aim is to actively integrate the platform in the fight against fraud and no longer passively through data transmission.

This administrative burden should be difficult to manage by operator, as in distance sales case where the platform is not able to determine if the business users exceeded the turnover threshold that modify the territoriality rules applicable to the operation (*i.e. between €35,000 and €100,000 in the EU*).

In case of omission or reduction of the reported turnover amount, the penalty is in principle 5% of the undeclared sums.

A first step towards several and joint liability

In order to avoid the application of any penalties, some platforms could be willing in a first quick scan to provide wider data (*i.e. users not included within the scope or turnover that should in principle not have been subject to French VAT*).

However, the determination of this turnover subject to VAT will be of a crucial importance for incoming several and joint liability applicable as from January 2020 in France (*i.e. related to the report provided in 2021 by platforms*). As a reminder, joint and several liability implied that the platform would be VAT liable for the payment of VAT when an user has made repeated VAT violation but has not been targeted by platform measures although the FTA have identified this user.

In this context, the determination of the turnover relating to transactions subject to French VAT will have to be sharp as the platform will increase its VAT risk by providing overestimated figures.

In the meantime, it should be underlined that platforms will have a similar and extensive role in the reform of distance sales in 2021 (*i.e. platform will be liable of VAT on some sales such as intra-EU distance sales performed by companies established outside EU or distance sales of low value goods imported*).

Conclusion

These draft decree new obligations implied that the platform communicates data determined by themselves. In this respect, the platforms would take an active role in the determination of the VAT rule applicable to every transactions and to the determination of the turnover that should be reported to the FTA. This implied a heavy administrative burden for platform operator and potentially a development phase to extract data of such precision.

In addition, this burden is part of the FTA's obligation to fight against fraud. This obligation would have the effect of placing the burden of fighting VAT fraud and its financial burden on businesses, which is seems debatable in light of the ECJ principle.

It is therefore necessary to wait and see whether this project will not be modified in order to avoid excessive administrative burden on the platforms that carry out intermediation activities compared to platforms that carry out resale/purchasing activities.

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