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TECHNOLOGY MARATHON

Tax Reporting Obligations for Digital Platforms

Neil McKnight and Kate Habershon

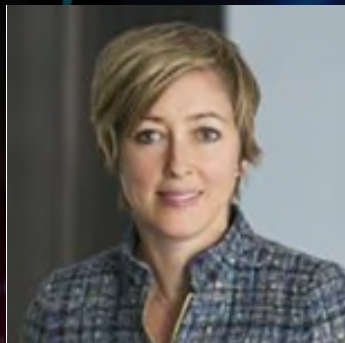
Friday, June 23, 2023 | 11:00 am – 12:00 pm ET

Presenters



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What we will cover today

- OECD Model Reporting Rules for Digital Platforms
- OECD Crypto Asset Reporting Framework
- UK and EU VAT Considerations for Digital Platforms

OECD Model Reporting Rules for Digital Platforms

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OECD Model Reporting Rules

- The rules require platform operators to collect information on their platform users and on transactions, and report that information to tax authorities
- Why are reporting rules being introduced?
 - Increased economic activity through sharing and gig economy
 - Lack of visibility on platform transactions for tax authorities
 - Poor compliance
- Tax authorities will exchange information with each other to ensure the correct amount of tax is being paid
- Compliance with the reporting rules will be enforced by local tax authorities

Overview of the reporting rules

- The model reporting rules will, broadly, require platforms to
 - Collect information to identify sellers and their location and their earnings on the platform
 - Verify that the information they have collected is correct
 - Report the collected information to tax authorities annually
 - Provide information to sellers to enable them to comply with their personal tax filing and payment obligations

Where (and when) are the rules being implemented?

- United Kingdom
 - UK government's most recent consultation on the implementation of the rules in 2022
 - Implementation deferred until 1 January 2024
 - First reports to be due 31 January 2025 for 2024 calendar year
- European Union member states
 - "DAC 7"
 - Came into force on 1 January 2023
 - First reports due 31 January 2024 for 2023 calendar year

Who is impacted by the rules? (1)

- Key concept: a “platform”
 - *Any software, including a website or a part thereof and applications, accessible by users and allowing Sellers to be connected to other users for the provision of Relevant Services [or the sale of Goods], directly or indirectly, to such users*
- Compliance with the rules is the responsibility of the “platform operator”
 - *These are entities that contract with sellers to make available all or part of a platform to such sellers*
 - They are subject to the rules in their jurisdiction of residence, incorporation or management
 - Optional extension for real estate

Who is impacted by the rules? (2)

- Who are “sellers”?
- Excluded sellers
 - Governmental entities
 - Certain publicly traded entities
 - High-frequency real estate “seller” – i.e. 2,000+ bookings per year (hotel operators)
 - Casual sellers
- Exclusions for certain platform operators
 - Small-scale platform operators (optional – UK, for example, won’t implement this)
 - Platforms where sellers can’t profit
 - Platforms with no reportable sellers

What are relevant goods and services?

- Original scope of rules covered
 - Property rental
 - “Personal services” – such as transport or delivery
- Extended rules also cover
 - Sale of goods
 - Rental of means of transportation
- Other platforms may need to file declaration to confirm exemption

What are the obligations of platform operators? (1)

- Platform operators must conduct diligence on sellers
 - For individuals: Name, Address, date of birth, TIN
 - For entities: entity name, primary registered office, TIN, business registration number
- Optional election to diligence active sellers only
- Excluded sellers - notification

What are the obligations of platform operators? (2)

- Verification of information collected
- Reporting obligations
 - Annual reporting to tax authority of reportable transactions
 - Reporting to sellers to enable them to comply with their own tax obligations
- Information reported will be automatically exchanged with tax authorities operators
- Maintenance of records
- Enforcement/penalties for non-compliance

OECD Crypto Asset Reporting Framework

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Introduction – crypto asset reporting framework (CARF)

- Automatic exchange of tax related information on users of, and transactions in, crypto assets between participating jurisdictions, on an annual basis
- Developed by the OECD to address the growth of the market, and to ensure that global tax transparency gains are not eroded
- Builds upon and amends the existing Common Reporting Standard, that already requires information on holders of financial accounts to be automatically exchanged between jurisdictions
- Crypto assets reliance on cryptography and distributed ledger technology, in particular blockchain technology permits transactions in a decentralised manner without traditional financial institutions and consequently outside the scope of previous information reporting
- Intermediaries and service providers, such as exchanges and wallet providers, may be subject to limited regulatory oversight

The CRS

- The Common Reporting Standard (CRS) was introduced in 2014 by the OECD as a global framework for the automatic exchange of information relating to financial accounts, with the first reporting taking place in 2017, with the goal of improving tax transparency
- Financial Institutions are required to collect information on holders of “financial accounts” and report such information to their local tax authority
- Tax authorities then exchange the information with the jurisdictions of such account holders, provided such jurisdictions have signed up to the CRS
- Over 100 jurisdictions have signed up to the CRS – but not the US
- In a CRS jurisdiction, relevant institutions may be required to report information on residents of jurisdictions that have not implemented the CRS, even though the relevant tax authority would not be required automatically to exchange such information



Key concepts of the CARF

- Three components:
 - Rules to be adopted by the domestic rules of adopting jurisdictions governing the collection and reporting of information
 - Multilateral instrument and commentary regarding exchange of information by tax authorities
 - An electronic format to be used in the exchange of information
- Four key building blocks:
 - The scope of crypto assets within scope
 - The entities with the obligation to collect data and report
 - Transactions subject to reporting
 - Due diligence procedures



Crypto assets within scope

- Crypto asset means “a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions”
- Excludes central bank digital currencies and crypto assets that cannot be used for payment or investment purposes
- Must represent a right to value, with ownership that can be traded or transferred
- Includes non-fungible tokens (NFTs) representing rights to collectibles, games, works of art, physical property or financial documents that can be traded or transferred to other individuals or entities in a digital manner



Entities with reporting obligations

- “Reporting Crypto-Asset Service Provider” means any individual or Entity that, as a business, provides a service effectuating exchange transactions for or on behalf of customers, including by acting as a counterparty, or as an intermediary, to such transactions, or by making available a trading platform
- If the customer is itself is a merchant, or is acting as agent or intermediary for an end customer the reporting is in respect of the end customer
- Will cover intermediaries, brokers, dealers and other service providers facilitating exchanges between relevant crypto assets, as well as between those crypto assets and fiat currencies



Entities with reporting obligations (contd.)

- Service providers are only covered if they have the requisite nexus to the relevant jurisdiction that has implemented the CARF (residency, incorporation, management, branch or regular place of business).
- The OECD believes such entities will generally be subject to KYC/AML rules and as such should have ready access to the information to be reported
- Clearly there will be an increased regulatory burden on such entities



Transactions subject to reporting

- Exchanges between crypto assets and fiat currencies
- Exchanges between one or more forms of crypto asset
- Transfers of relevant crypto assets
- Reportable Retail Payment Transactions, namely payments on behalf of a merchant accepting crypto assets in payment for goods or services exceeding €50,000
- Reporting is on an annual aggregate basis, by type of crypto asset, and by transfer type



Due diligence

- Obligation to seek self certification by users of relevant information when establishing a relationship, or within 12 months of commencement of rules for existing customers
- May be entitled to rely on existing AML/KYC information
- If the crypto asset user is an entity, the aim is to identify significant ultimate individual beneficial owners, through identification of “controlling persons”
- Information to be reported includes:
 - Name, address, residence, tax ID number, date and place of birth of user
 - Identity of service provider
 - Name and number of units of crypto asset and gross amount paid and received
 - Aggregate fair market value of transactions



UK and EU VAT considerations for digital platforms

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VAT for digital platforms

- Currently, UK VAT law remains largely aligned with EU VAT law, so the concepts discussed here are generally applicable in the UK and EU
- Normally there is a distinction between business-to-business (B2B) and business-to-consumer (B2C) supplies
- Overrides to normal B2C rule - services and supplies of goods through platforms may be treated as being supplied where the consumer/recipient of the service is located - which creates complexity for platform operators due to absence of reverse charge

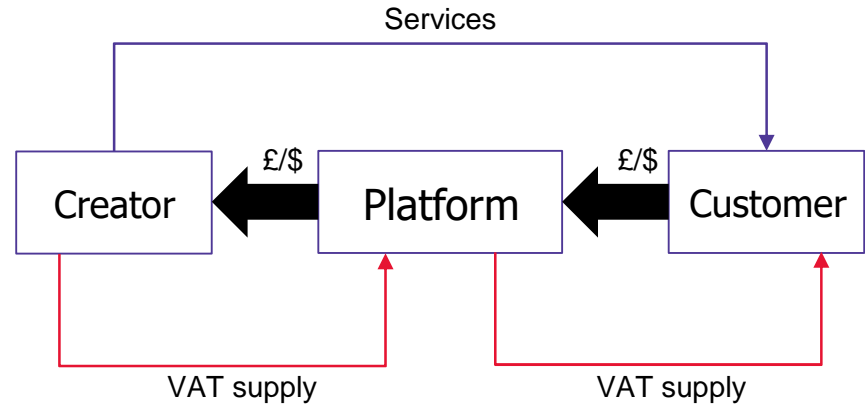


Electronically supplied services (1)

- Electronically supplied services
 - Automated with minimal human intervention
 - Examples include purchases of digital downloads (e.g. software, audio, films) from platforms
 - Live content (e.g. live webinars) not covered by this
- These rules also apply to supplies of
 - Radio and television broadcasting services
 - Telecommunications services

Electronically supplied services (2)

- Is the platform, or the content creator/provider, the person making the supply?
- Platforms supplying (or treated as supplying) electronic services to consumers in the UK and EU are generally responsible for accounting for VAT on the transaction



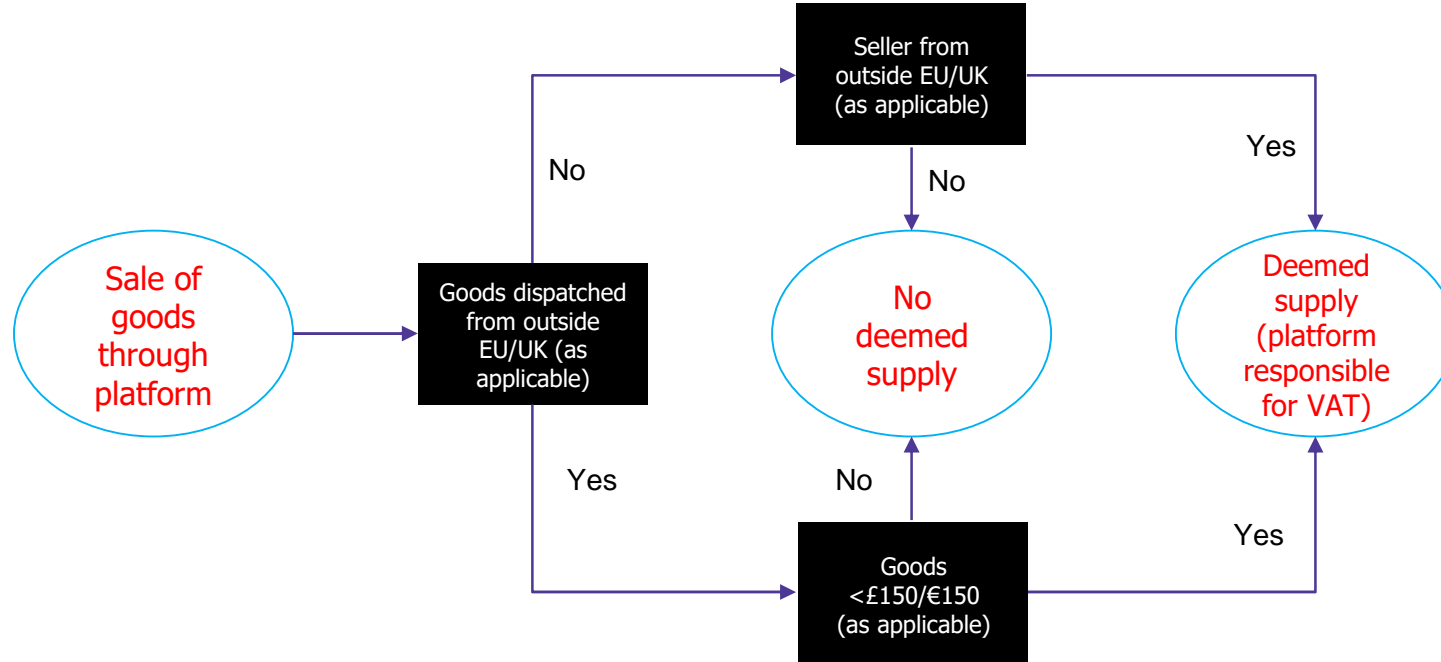
Electronically supplied services (3)

- Complex areas
 - Is my customer a consumer or a business?
 - Bundled goods
- Supplies into the EU: €10,000 threshold
- Note, these rules also apply to supplies of broadcasting, telecommunications services

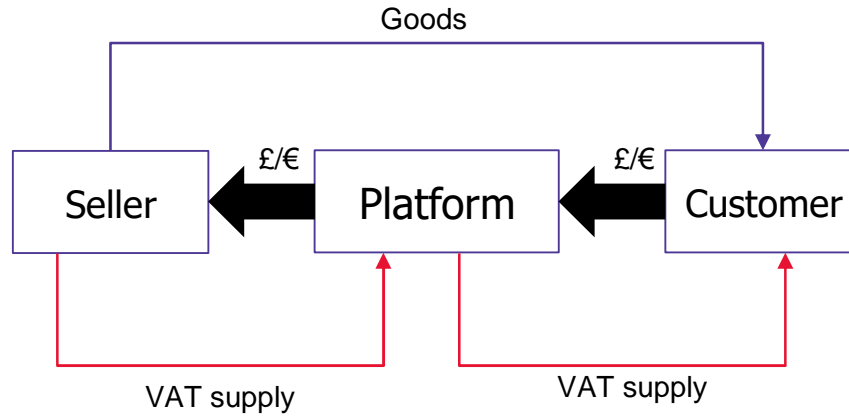
Supplies of goods (1)

- The basic position is that B2C supplies of goods to UK/EU customers are subject to VAT where the customer belongs
- Online marketplace platforms acting in the supply chain may be required to collect VAT due and account for it to the tax authorities
- In both the UK and the EU the rules apply where
 - Low value goods are imported for supply to a customer in the UK/EU (low value is <£135 in the UK/<€150 in the EU)
 - Goods already located in the UK are supplied to a UK customer by a non-UK supplier
 - Goods already located in the EU are supplied to an EU customer by a non-EU supplier

Supplies of goods (2)



Supplies of goods (3)



What do platform operators need to do?

- Identify whether the customer is a business or a consumer
- Identify where the customer is located
- Collect appropriate evidence
- Determine the correct VAT treatment of supplies
- Meet appropriate registration requirements
 - Stand-alone VAT registration
 - In the EU, consider registration for the MOSS (mini one-stop shop) or IOSS (import one-stop shop)

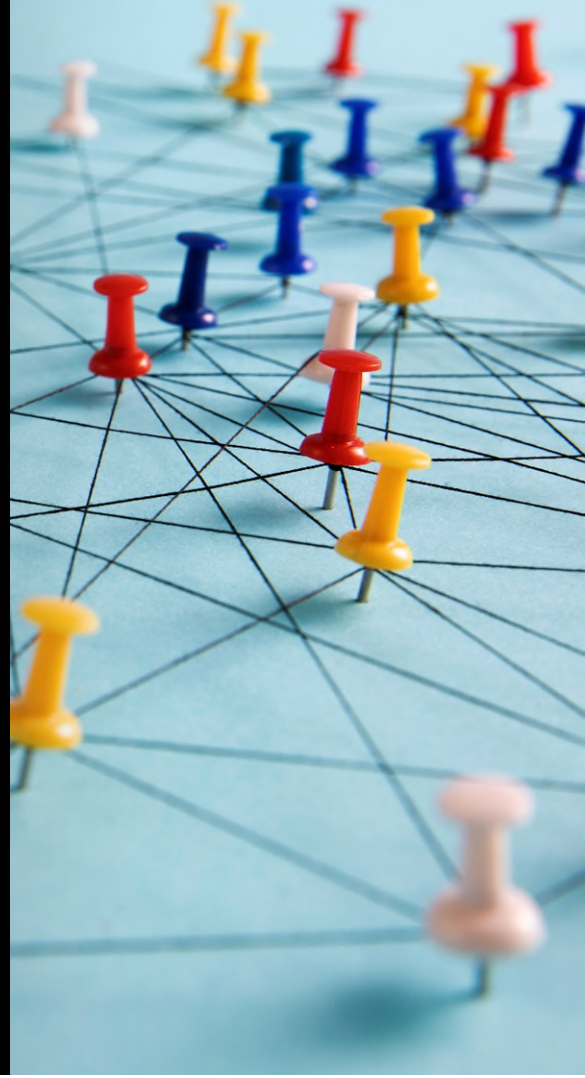
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Biography



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Kate Habershon advises corporations and funds on corporate taxation. Her focuses include tax and structuring issues related to international tax planning, mergers and acquisitions, corporate finance, private equity, executive compensation, internal group restructurings, and financial products. Before joining Morgan Lewis, Kate was tax counsel in the London office of another international law firm, a solicitor on the international and energy tax teams of a Magic Circle firm, and a lawyer in the tax department of the Sydney, Australia, office of another international law firm.

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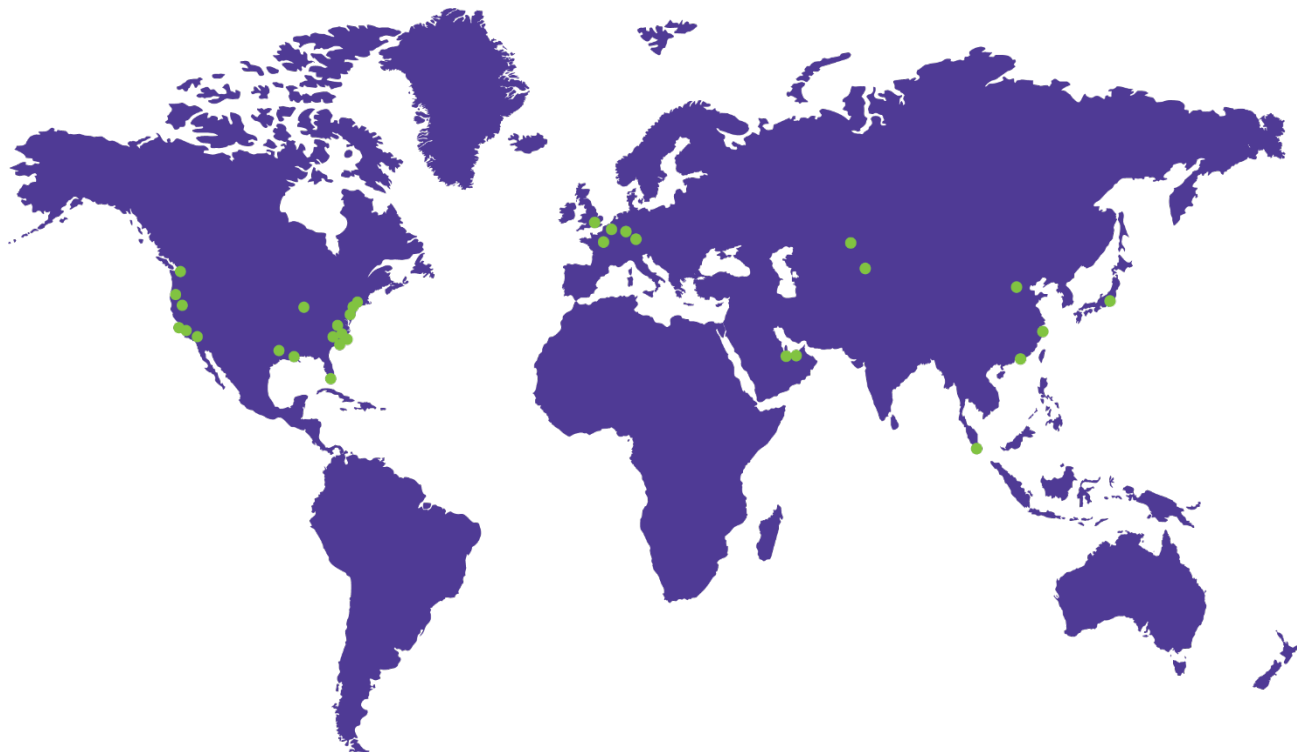
Neil McKnight advises on transactional tax matters, focusing on M&A transactions, domestic and international tax structuring, financial transactions (including securitisations and structured finance), and real estate tax matters (including transactional real estate, landlord and tenant, and real estate investment). Neil advises on indirect taxes, particularly regarding financial services and cross-border supplies of goods and services. He also supports the firm's employment practice, advising on matters including international mobility of employees and employee incentivisation arrangements. He is a co-leader of the firm's LGBTQ+ Lawyer Network and is recognised in The Legal 500 UK.

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