

E-commerce Webinar Trilogy – Part 3

EU rules for platform trading

Speakers



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Agenda



Introduction



**Existing rules
for platform
owners and
users**



**New rules for
platform users**



Q&A



Existing rules for platform owners and users

Intermediaries, commissioners and platforms

- Intermediary
acting in the name and on behalf of another person
- Commissioner
acting in own name and on behalf of another person
- Digital platform (electronic interface)



Intermediary: the platform is not liable for VAT

Commissioner: the platform is liable for VAT

Fiction for platforms (2x)

- Fiction for platforms facilitating services (1/1/2015 – TBE services)
 1. participation of a taxable person in the supply of service
 2. acting in his own name
 3. but on behalf of another person

➤ *The platform is liable for VAT*

- Fiction for platforms facilitating supplies of goods
 1. distance sales of goods imported from outside the EU and delivered within the EU to customers who are not required to file a VAT return. The shipment has a value of up to € 150.
 2. goods sold from a warehouse in the EU by an entrepreneur who is himself established outside the EU. In this case, the value of the goods does not matter.

➤ The platform fiction only applies to platforms that 'facilitate':

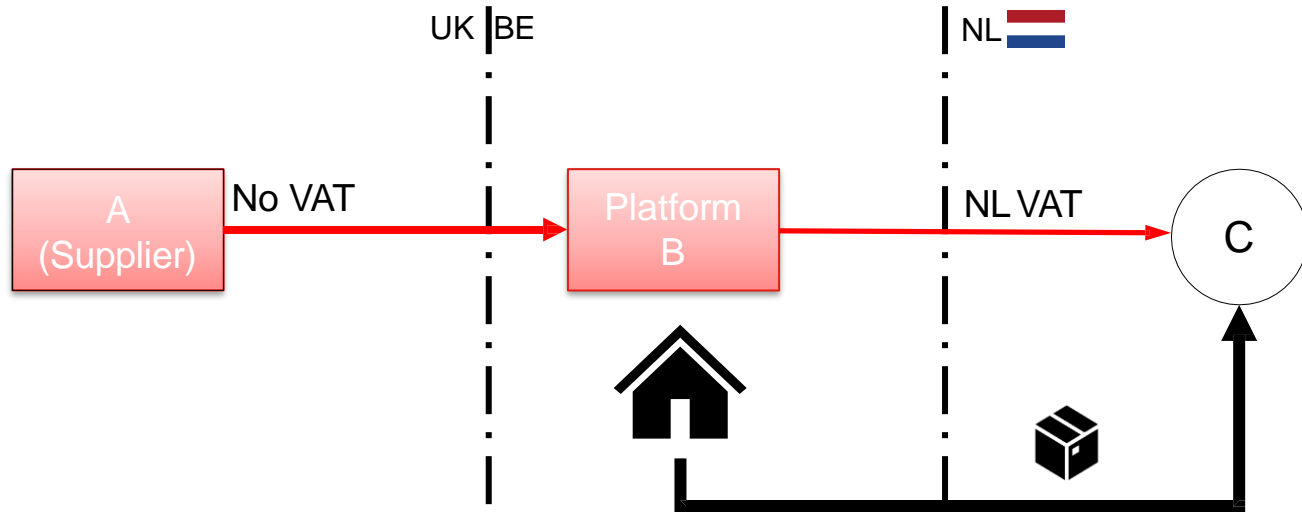
 - ❖ brings together customers and suppliers offering goods for sale on the platform
 - ❖ has general terms and conditions
 - ❖ is involved in the payment of customers and the ordering and delivery of goods

Fiction for platforms facilitating **services**

- Fiction for platforms facilitating services
 - *B2B vs. B2C*
 - *EU vs. UK*
 - *Of gaat deze sheet te ver aangezien de focus wordt gelegd op afstandsverkopen?*

Fiction for platforms facilitating **supplies of goods (EU B2C)**

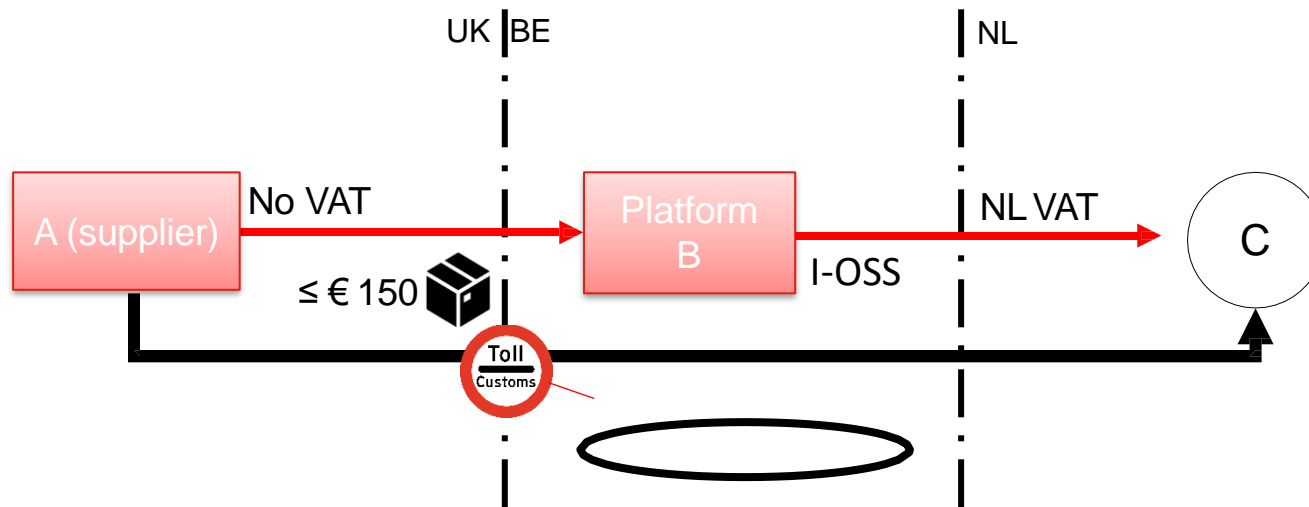
- **EU B2C**
 - Platform opting for OSS vs. not opting for OSS



- Goods sold from a warehouse in the EU (BE) by an entrepreneur who is himself established outside the EU (UK).
- The value of the goods does not matter.
- Transaction A-B: No VAT (Exempted)
- Transaction B-C: Platform pays Dutch VAT
- Platform could register in the Netherlands but could also apply the Union-rule (OSS) and register in Belgium.

Fiction for platforms facilitating **supplies of goods (Non-EU B2C)**

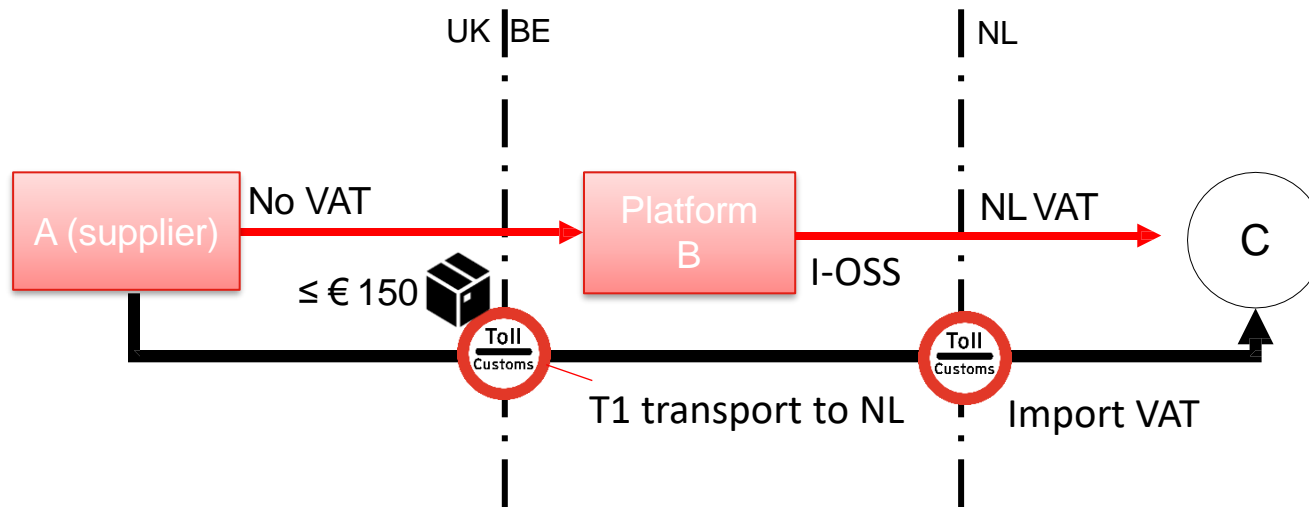
- **Non-EU (UK) B2C**
- Platform is using I-OSS



- distance sales of goods imported from outside the EU (UK) and delivered within the EU to customers who are not required to file a VAT return.
- The shipment has a value of up to € 150.
- Transaction A – B: No VAT (UK out of scope)
- Transaction B-C: Dutch VAT on EU distance sales
- Import exemption in Belgium
- Platform provides I-OSS number to Supplier and the supplier provides the I-OSS number to the logistic partner for import exemption at customs.
- Platform distance sales in I-OSS declaration

Fiction for platforms facilitating **supplies of goods (Non-EU B2C)**

- **Non-EU (UK) B2C**
- Platform is not using I-OSS



- distance sales of goods imported from outside the EU (UK) and delivered within the EU to customers who are not required to file a VAT return.
- The shipment has a value of up to € 150.
- Transaction A – B: No VAT (UK out of scope)
- Transaction B-C: Dutch VAT on EU distance sales
- Import in NL (not Belgium)
- T1 transport to NL
- Import VAT in NL

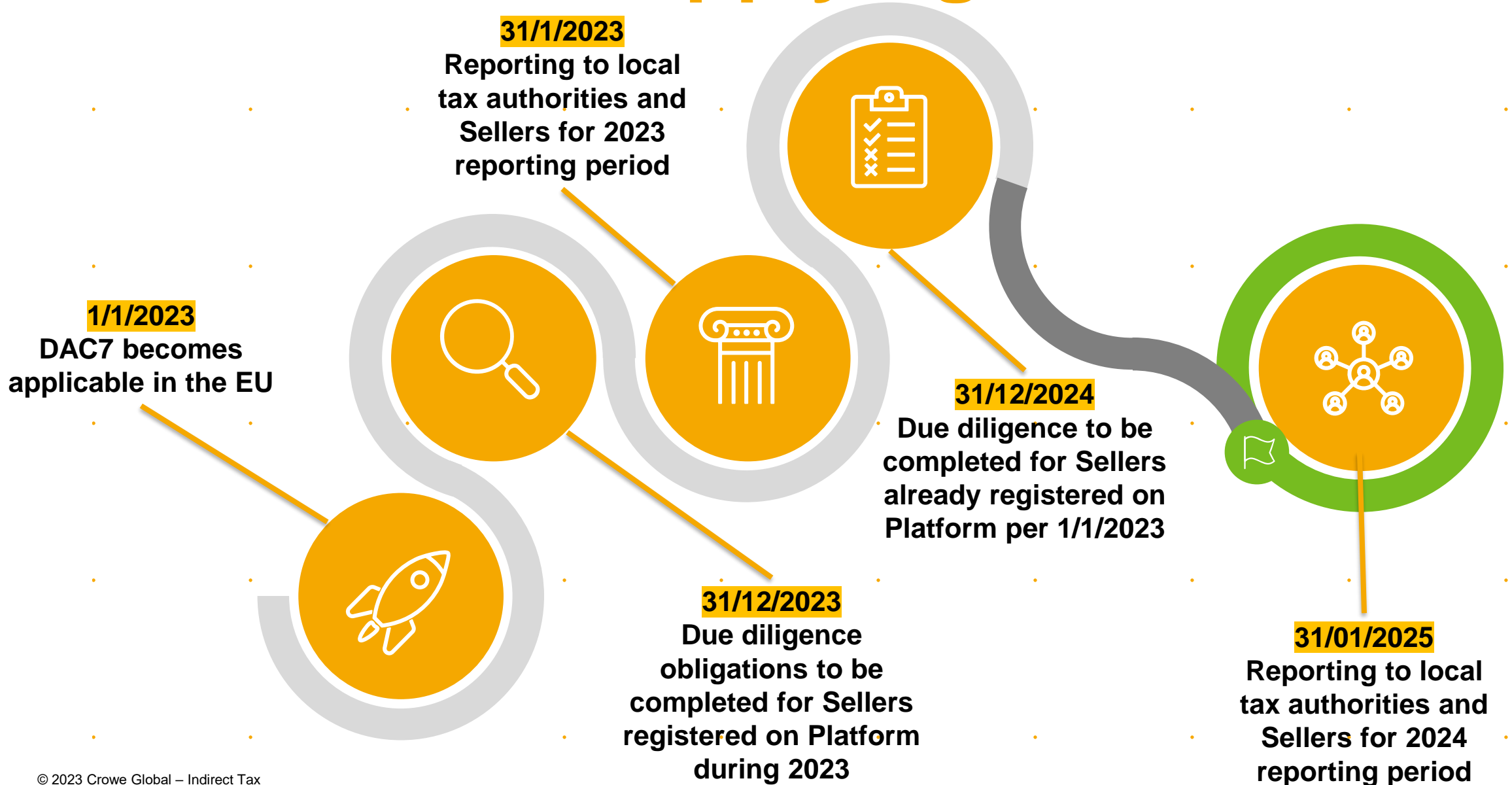
Formal rules & Risks

- Administrative obligations
 - Depends on opting for a special regime (union scheme etc.)
 - art 242 bis RI
- Liabilities
 - art. 201 jo. art. 205 Btw-RL
- Risks
 - art 5 quater Uitv. Verordening
 - I-OSS number fraud
- More administrative rules under DAC7 (since 1/1/2023) en CESOP (per 1/1/2024)

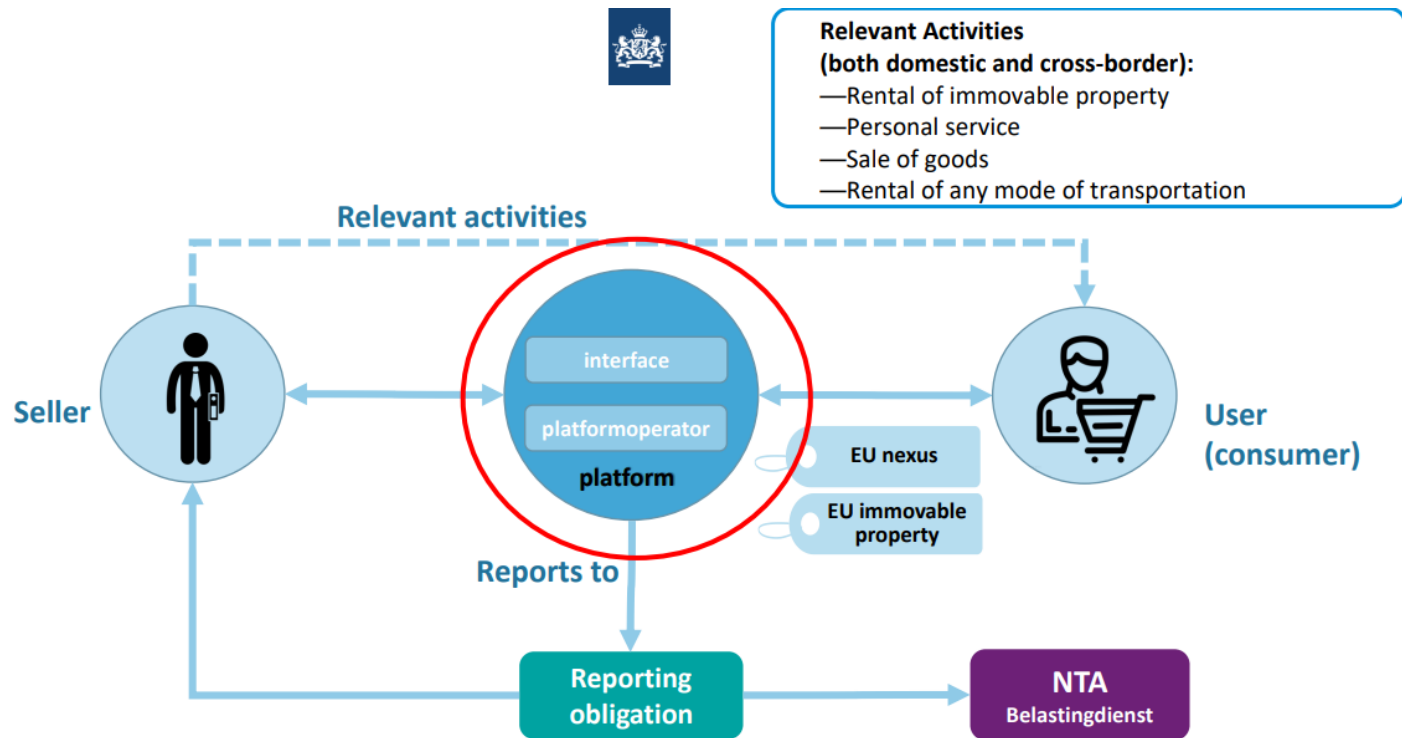


New rules for platform users

Timeline when applying DAC7



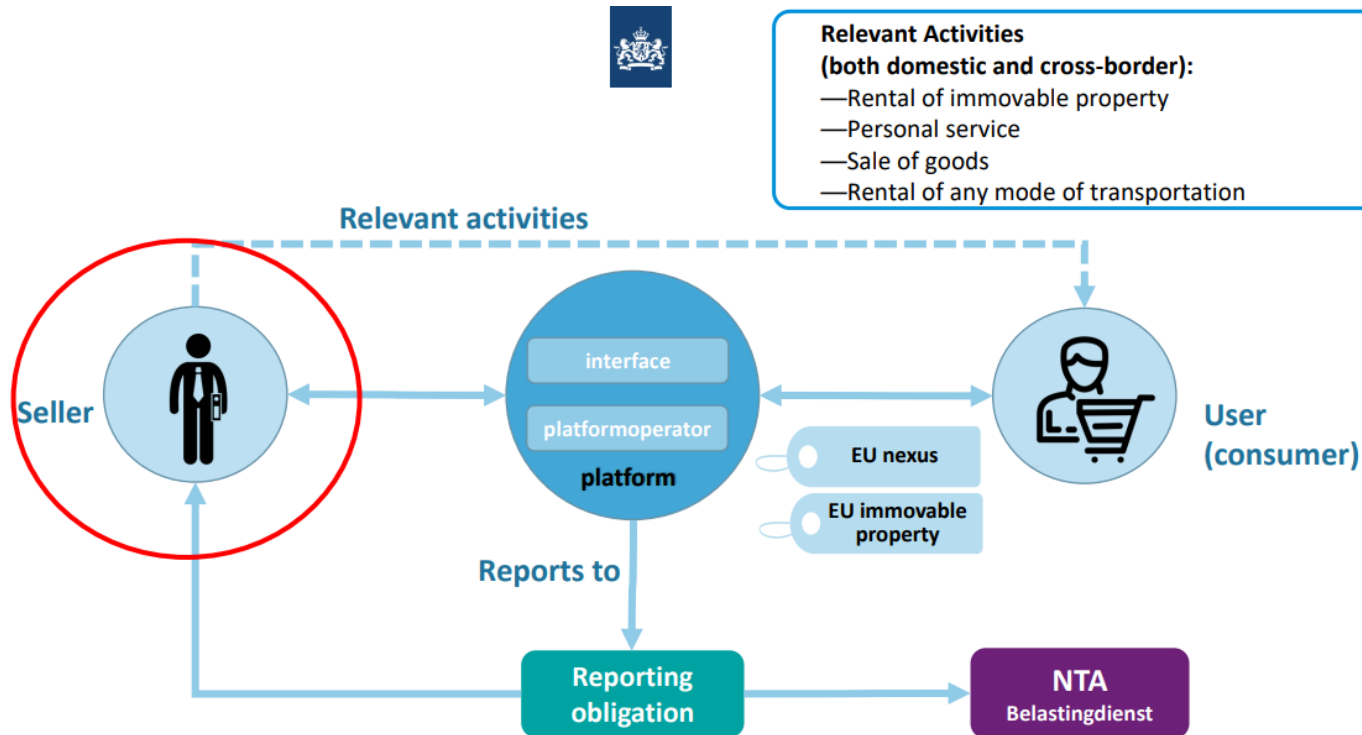
Platform & Platform operator under DAC7



- **Platform:** ‘any software, including a website or a part thereof and applications, including mobile applications, accessible by users and allowing Sellers to be connected to other users for the purpose of carrying out a Relevant Activity, directly or indirectly, to such users. It also includes any arrangement for the collection and payment of a Consideration in respect of Relevant Activity.’

- **Platform operator:** ‘an entity that contracts with Sellers to make available all or part of a platform to such sellers.’

Seller



- **"A reportable seller" is a:**
- ✓ **"Seller"** means a platform user, either an individual or an entity, that is registered at any moment during the reportable period on the platform and carries out a relevant activity.
- ✓ **"Active Seller"** any seller that either provides a relevant activity during the reportable period or is paid or credited consideration in connection with a relevant activity during reportable period.
- x **"Excluded seller":**
 - Governmental entity
 - Listed company
 - More than 2.000 relevant activities of the rental of immovable property; or
 - Less than 30 relevant activities and max. €2.000 consideration.

Relevant activities and consideration

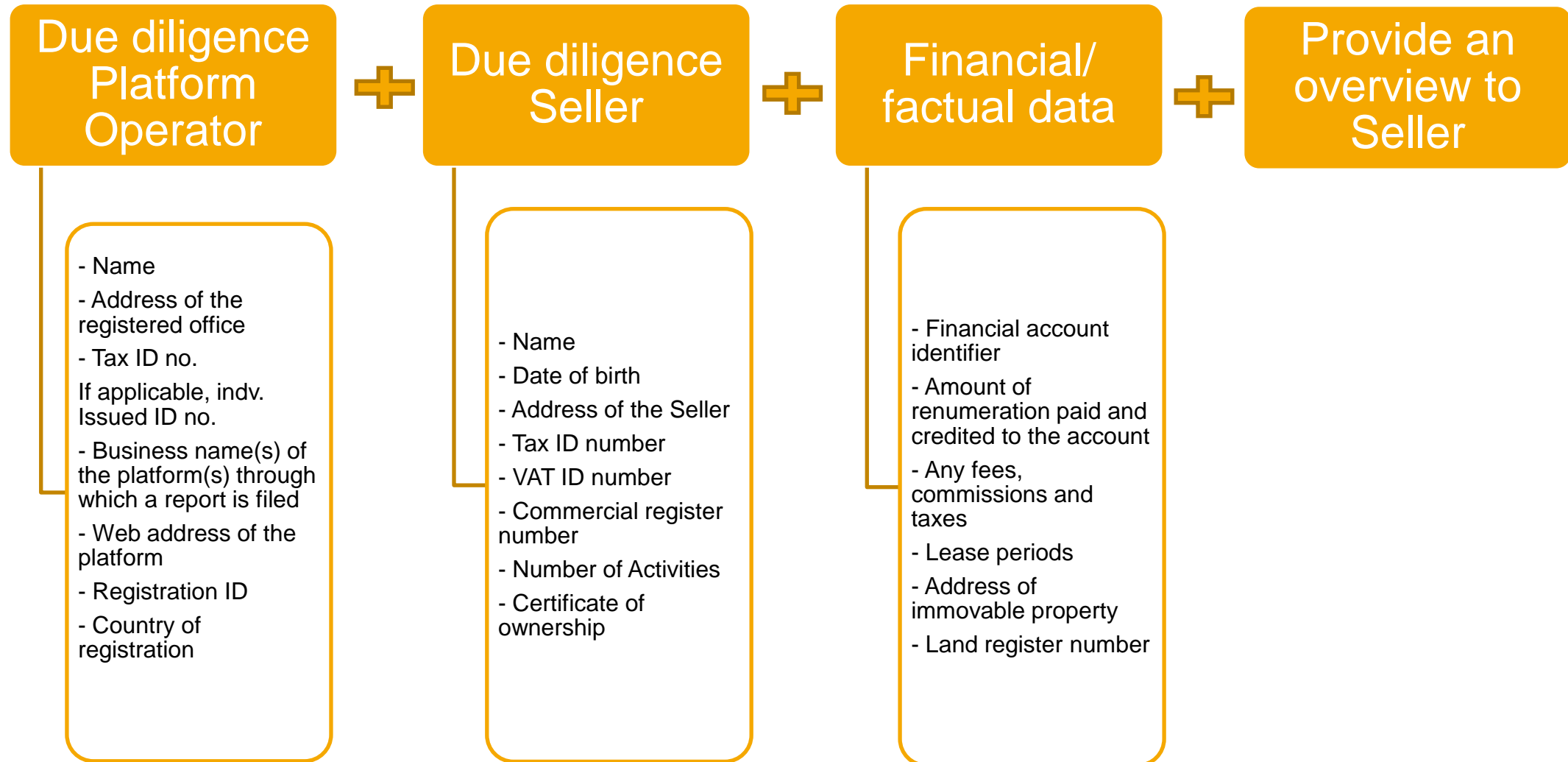
- Relevant activities

- ❖ Rental of immovable property
- ❖ Personal Service:
“a service involving time- or task-based work performed by one or more individuals, acting either independently or on behalf of an Entity, and which is carried out at the request of a user, either online or physically offline after having been facilitated via a Platform.”
- ❖ The sale of Goods
- ❖ The rental of any mode of transport
- Does not include an activity carried out by a Seller acting as an employee of the Platform Operator or a related Entity of the Platform Operator”.

- Consideration

- ❖ Compensation
- ❖ Any form
- ❖ Amount is known or reasonably knowable

DAC7 - Reporting obligation



DAC7 – Practical example

- Voorbeeld toevoegen toepassing DAC7?

DAC7 – Summary

➤ Takeaways

- Scope of DAC7 is not always clearcut
- DAC7 has a broader range than just the ‘usual platform’ situations

➤ Actions

- Map online sales channels used or offered
- Map types of sales/transactions carried out through those channels
- Map (types of) sellers of those sales/transactions
- Monitor developments in DAC7

CESOP - Background

- Payment Service Providers in the EU will need to report cross-border payments on a quarterly basis as from Q1 2024 (first reporting due by 30 April 2024)
- The rules have similarities with other tax driven obligations (FATCA/CRS and DAC6, 7 and 8) and apply to payments originating from an EU Member State
- Detailed information on the transactions, including identification of the beneficiary of the payment (payee) will need to be shared with local tax authorities

CESOP – In scope institutions

In scope institutions

- Essentially, almost all PSPs providing payment services in an EU Member State are in scope, i.e.:
 - credit institutions, i.e. banks
 - e-money institutions
 - payment institutions
 - post-office giro institutions which are entitled under national law to provide payment services.
 - PSPs that process less than € 3 million of payment transactions annually are also in scope.

CESOP – Transactions eligible for reporting

Transactions eligible for reporting

- All types of payment transactions, i.e., card payments (debit and credit), credit and bank transfers (including SWIFT), direct debits (SEPA and non SEPA), e-money and money remittance transactions are reportable, provided that:
 1. the payer of the transaction is in the EU (based on the IBAN or BIC)
 2. the payment is cross-border, i.e. the payment is made to another EU Member State or to a third country outside of the EU
 3. more than 25 cross-border payments have been made to a same payee in a calendar quarter

CESOP – Reporting information

Transactions eligible for reporting

- The PSP of the payer and the PSP of the payee are required to report, among other things, the following information on the transactions:
 - IBAN, or any other identifier of the payee
 - BIC, or any other unique identifier of the PSP of the payee
 - name of the payee
 - VAT number or national tax number of the payee, if available, address of the payee
 - BIC, or any other business identifier of the PSP of the payer
 - details on the payment (e.g. date, currency, amount, reference, card present or not present transactions...)
 - details on payment refunds

CESOP – Summary

Take away

- identify all payment channels used for in-scope transactions
- assess whether the required data for reporting is available, complete and accurate
- understand intragroup relationships and map payment transactions to subsidiaries or branches across the countries (within or outside EU)
- aggregate the data and implement rules and criteria to select the transactions eligible for reporting and which PSPs should report
- implement an end-to-end reporting process to produce and send the data in the required format (xml) to local tax authorities on a quarterly basis

Questions?



Thank You

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