

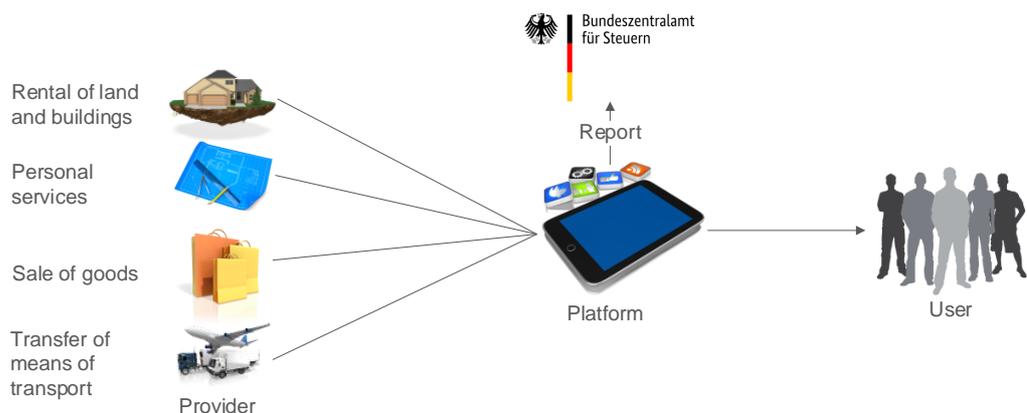


Ministry of Finance letter on Platform Tax Transparency Act (PStTG - implementation of DAC7 Directive)

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1 Background

On 01.01.2023, the Platform Tax Transparency Act (PStTG), which determines comprehensive reporting obligations for digital platforms, came into force. The PStTG implements the so-called DAC7 Directive. Platform operators are now required to collect specified reportable information from providers on their platform and report it to the Federal Central Tax Office (cf. KMLZ VAT Newsletter 31 | 2022). In principle, the report for the calendar year 2023 must be submitted by 31.01.2024, at the latest. Incorrect, incomplete or untimely reporting constitutes an administrative offence and is punishable with a possible fine of up to EUR 30,000.



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The binding ruling according to sec. 10 of the PStTG can provide legal certainty. In the case of any doubt about the requirements of a platform, as defined in sec. 3 para 1 of the PStTG, or a relevant activity, as defined in sec. 5 para 1 of the PStTG, the Federal Central Tax Office will make a binding decision on application within the framework of an information request subject to a fee. In addition, platform operators can apply to the Federal Central Tax Office for a temporary exemption from reporting obligations for a limited period of time pursuant to sec. 11 of the PStTG.

2 Application questions regarding the Platforms Tax Transparency Act (PStTG)

The Federal Ministry of Finance's letter of 02.02.2023 is intended to support the proper implementation of the PStTG and address practical issues, which it does in many respects. It establishes fundamental normative connections, e.g. between the obligations according to sec. 14 of the PStTG and sec. 22f, 25e of the German VAT Act. In addition, the circular contains helpful explanations on various points that do not result from the PStTG. It was also previously unclear where the reporting platform operators could obtain certain information, for example on qualified third countries and qualified agreements with third countries. The letter provides useful links to the Federal Central Tax Office. The first announcements on the electronic data set and the electronic interface are also interesting for practice.

In connection with the duty of platform operators to verify providers' VAT identification numbers (sec. 18 para 1 sentence 2 of the PStTG), the Ministry of Finance refers to the VIES query. The VIES database merely confirms the validity of German VAT identification numbers without providing any information on the companies themselves. However, since the VAT Act only requires a full check for warehouse keepers (sec. 18e no. 2 of the German VAT Act) and online marketplaces, as defined in sec. 25e para 1 of the German VAT Act (sec. 18e no. 3 of the German VAT Act), all other platform operators should fulfil their due diligence obligations under sec. 18 para 1 sentence 2 of the PStTG by carrying out the VIES query.

The Ministry of Finance's comments on the obligation to correct inaccurate reports are significant. In its opinion, incorrect reports already exist if reports are transmitted containing information that is not required to be reported. This represents a considerable risk for platform operators given that even a carelessly incorrect report or a carelessly missing, incorrect, incomplete or late correction results in an administrative offence punishable by a fine.

3 Consequences for the practice

It is to be welcomed that the Federal Ministry of Finance has published an application letter on the new legal regulation only one month after the PStTG came into force. As a result, the Federal Ministry of Finance's letter contributes to a legally secure application of the PStTG, even if it mainly quotes the law without providing much help in its interpretation. Unfortunately, the Ministry does not comment on some practice-relevant questions or only does so in a very limited way. For example, there are no explanations for certain borderline cases in the provision of relevant activities. The information pursuant to sec. 10 of the PStTG is only of limited help here due to the narrow scope of its application. The Ministry has also failed to specify details of the information procedure. In our experience, practical delimitation problems arise in this area, especially in the case of larger group structures. The platform industry would therefore ideally have wished for more detailed statements. Affected platforms should carefully examine whether they are subject to a reporting obligation and which information specifically is to be reported. The approach of "better to report too much than too little" is not recommended. According to the strict wording of the Ministry's letter, merely "over-reporting" is equivalent to "non-reporting" and is also subject to a fine.