



2023/2693

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COMMISSION IMPLEMENTING REGULATION (EU) 2023/2693

of 30 November 2023

determining that the information to be automatically exchanged pursuant to the agreement signed by the competent authorities of New Zealand and certain Member States is equivalent to the information specified in certain provisions of Council Directive 2011/16/EU

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC ⁽¹⁾, and in particular Article 8a(7), first subparagraph, thereof,

Whereas:

- (1) Article 8a(7), first subparagraph, of Directive 2011/16/EU provides that the Commission is, following a reasoned request by a Member State or on its own initiative, to determine whether the information that is to be automatically exchanged by the competent authorities of that Member State and a non-Union jurisdiction under an agreement between those authorities and that jurisdiction is equivalent to that specified in Section III, paragraph B, of Annex V to that Directive. Commission Implementing Regulation (EU) 2023/823 ⁽²⁾ lays down rules for implementing that provision of Directive 2011/16/EU.
- (2) Following a request by the competent authority of New Zealand on 31 March 2023, the Commission decided to determine whether the information that is required to be automatically exchanged pursuant to the Multilateral Competent Authority Agreement on automatic exchange of information on income derived through digital platforms ⁽³⁾ ('DPI-MCAA') currently signed by the competent authorities of New Zealand and Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, Ireland, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden ('the signatory Member States') relates to the activities within the scope of Directive 2011/16/EU and whether it is equivalent to the information required under the reporting rules set out in that Directive.
- (3) For the purposes of the determination, the Commission assessed New Zealand's Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 ('the Act') ⁽⁴⁾ and the DPI-MCAA currently signed between the competent authorities of New Zealand and the signatory Member States.
- (4) The Act amends New Zealand's Tax Administration Act 1994 and applies provisions of the Organisation for Economic Cooperation and Development (OECD) 2020 Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy ⁽⁵⁾ ('the Model Rules'), supplemented by the OECD 2021 Model

⁽¹⁾ OJ L 64, 11.3.2011, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) 2023/823 of 13 April 2023 laying down detailed rules for implementing certain provisions of Council Directive 2011/16/EU as regards the assessment and determination of equivalence of information in an agreement between the competent authorities of a Member State and a non-Union jurisdiction (OJ L 103, 18.4.2023, p. 1).

⁽³⁾ The DPI-MCAA is available online at Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods (oecd.org)

⁽⁴⁾ The Taxation (Annual Rates for 2022-23 Platform Economy, and Remedial Matters) Act 2023 is available online at <https://www.legislation.govt.nz/act/public/2023/0005/latest/LMS749649.html>

⁽⁵⁾ OECD (2020), Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy, OECD, Paris. Available online at <https://www.oecd.org/tax/exchange-of-tax-information/model-rules-for-reporting-by-platform-operators-with-respect-to-sellers-in-the-sharing-and-gig-economy.pdf>

Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for sale of goods ⁽⁶⁾ ('the extended Model Rules'). A term defined in the Model Rules or the extended Model Rules and used in the Act has the meaning that it has at the time in the Model Rules or extended Model Rules.

- (5) The Sections of the Act that apply the Model Rules will enter into force on 1 January 2024. One of them is Section 211, which inserts Sections 185S and 185T in the Tax Administration Act 1994. Under Section 185T of the Tax Administration Act 1994, the Governor-General may, by Order in Council made on the recommendation of the Minister of Revenue, declare a date on which the Sections of the Tax Administration Act 1994 that apply the extended Model Rules are to enter into force, and that Order in Council is to be made at the latest three years after the date of entry into force of the Act.
- (6) The DPI-MCAA is an international legal framework developed by the OECD to support the annual automatic exchange of information collected under the OECD Model Rules by the residence jurisdiction of the platform operator with the jurisdictions of residence of the sellers (and, with respect to transactions involving the rental of immovable property, the jurisdictions in which such immovable property is located), as determined on the basis of the due diligence procedures.
- (7) The DPI-MCAA currently signed by New Zealand and the signatory Member States requires the activation of the exchange relationship between New Zealand and each of the signatory Member States in accordance with Section 7 of the DPI-MCAA.
- (8) In accordance with Article 2 of Implementing Regulation (EU) 2023/823, the Commission has determined that the definitions regarding the reporting platform operator set out in the Act and in the DPI-MCAA signed by the competent authorities of New Zealand and the signatory Member States are equivalent to the definitions set out in Section I, subparagraphs A(1) to A(4), of Annex V to Directive 2011/16/EU.
- (9) In accordance with Article 3 of Implementing Regulation (EU) 2023/823, the Commission has determined that the definitions regarding reportable sellers set out in the Act and in the DPI-MCAA signed by the competent authorities of New Zealand and the signatory Member States are equivalent to the definitions set out in Section I, subparagraphs B(1) to B(4), C(1) and C(2), of Annex V to Directive 2011/16/EU.
- (10) In accordance with Article 4 of Implementing Regulation (EU) 2023/823, the Commission has determined that the definitions of relevant activity set out in the Act and in the DPI-MCAA signed by the competent authorities of New Zealand and the signatory Member States are equivalent to the definitions set out in Section I, subparagraphs A(8), A(10), A(11) and C(9), of Annex V to Directive 2011/16/EU.
- (11) In accordance with Article 5 of Implementing Regulation (EU) 2023/823, the Commission has determined that the due diligence procedures set out in the Act and pursuant to the DPI-MCAA signed by the competent authorities of New Zealand and the signatory Member States are equivalent to the due diligence procedures set out in Section II of Annex V to Directive 2011/16/EU and the definitions set out in Section I, subparagraphs C(3) to C(7), of Annex V to Directive 2011/16/EU.
- (12) In accordance with Article 6 of Implementing Regulation (EU) 2023/823, the Commission has determined that the reporting requirements set out in the Act and pursuant to the DPI-MCAA signed by the competent authorities of New Zealand and the signatory Member States are equivalent to the reporting requirements set out in Section III, subparagraphs A(1), A(2), A(5), A(6) and A(7) and paragraph B of Annex V to Directive 2011/16/EU, and the definitions set out in Section I, subparagraphs C(3) to C(8), of Annex V to Directive 2011/16/EU.

⁽⁶⁾ OECD (2021), Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods, OECD, Paris. Available online at <https://www.oecd.org/tax/exchange-of-tax-information/model-reporting-rules-for-digital-platforms-international-exchange-framework-and-optional-module-for-sale-of-goods.pdf>

- (13) In accordance with Article 7 of Implementing Regulation (EU) 2023/823, the Commission has determined that the rules and administrative procedures laid down in the Act, and in the DPI-MCAA signed by the competent authorities of New Zealand and the signatory Member States, to ensure the effective implementation of, and compliance with, the due diligence procedures and reporting requirements are equivalent to the provisions set out in Section IV, paragraphs A to D of Annex V to Directive 2011/16/EU.
- (14) Therefore, the information that is required to be automatically exchanged between the competent authorities of New Zealand and the signatory Member States pursuant to the DPI-MCAA should be deemed to be equivalent to that specified in Section III, paragraph B, of Annex V to Directive 2011/16/EU. In accordance with Article 8 of Implementing Regulation (EU) 2023/823, this determination of equivalence applies to the same agreement between the competent authorities of any other Member State and New Zealand.
- (15) Since the Sections of the Act that apply provisions of the Model Rules have not yet entered into force, the determination of equivalence should only apply to the relevant activities involving the rental of immovable property and a personal service, as defined in Section I, subparagraph A(11), of Annex V to Directive 2011/16/EU, from the date of entry into force of those Sections.
- (16) Since the Sections of the Tax Administration Act 1994 that apply provisions of the extended Model Rules will only enter into force on a date specified in an Order in Council which is yet to be adopted by New Zealand's Governor-General, but is to be adopted at the latest on 1 April 2026, the determination of equivalence should also apply to the relevant activities involving the rental of any mode of transport and the sale of goods, as defined in Section I, subparagraph C(9), of Annex V to Directive 2011/16/EU, from the date of entry into force of those Sections.
- (17) However, the determination of equivalence should only apply provided that the exchange relationship between New Zealand and the signatory Member States is activated in accordance with Section 7 of the DPI-MCAA.
- (18) As required by Article 25(1) of Directive 2011/16/EU, all exchange of information between the competent authorities of Member States and non-Union jurisdictions pursuant to the DPI-MCAA is to comply with Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽⁷⁾.
- (19) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽⁸⁾.
- (20) The measures provided for in this Regulation are in accordance with the opinion of the Committee on administrative cooperation for taxation,

HAS ADOPTED THIS REGULATION:

Article 1

Determination of equivalence

The information that is required to be automatically exchanged pursuant to the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 and the Multilateral Competent Authority Agreement on automatic exchange of information on income derived through digital platforms ('DPI-MCAA') currently signed by the competent authorities of New Zealand and Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, Ireland, Latvia, Luxembourg, Malta,

⁽⁷⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽⁸⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Netherlands, Poland, Portugal, the Slovak Republic, Slovenia, Spain and Sweden ('the signatory Member States') is equivalent, within the meaning of Section I, subparagraph A(7), of Annex V to Directive 2011/16/EU, to the information specified in Section III, paragraph B, of Annex V to Directive 2011/16/EU.

The determination of equivalence shall apply as follows:

- (i) it shall apply to the relevant activities involving the rental of immovable property and a personal service as defined in Section I, subparagraph A(11), of Annex V to Directive 2011/16/EU from the date of entry into force of all of the Sections of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 that apply provisions of the Organisation for Economic Cooperation and Development (OECD) 2020 Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy, and which were assessed by the Commission;
- (ii) it shall apply to the relevant activities involving the rental of any mode of transport and sale of goods as defined in Section I, subparagraph C(9), of Annex V to Directive 2011/16/EU from the date of entry into force of all of the Sections of the Tax Administration Act 1994, as amended by the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023, that apply provisions of the OECD 2021 Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for sale of goods, and which were assessed by the Commission;
- (iii) in addition to the conditions laid down in points (i) and (ii), it shall only apply when the exchange relationship between the competent authorities of New Zealand and each signatory Member State is activated in accordance with Section 7 of the DPI-MCAA.

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 November 2023.

For the Commission
The President
Ursula VON DER LEYEN