

## The Platform Operators (Due Diligence and Reporting Requirements) Regulations 2023

### Overview

The **UK Platform Operators (Due Diligence and Reporting Requirements) Regulations 2023 (the "Regulations")**, which came into force on **1 January 2024**, implement the **OECD Model Rules**<sup>1</sup> into UK law.

The first reports under the Regulations are due to HMRC on or before 31 January 2025, in relation to the period: 1 January 2024 to 31 December 2024.

### Who the Regulations apply to

The Regulations apply to platform operators which facilitate the provision of Relevant Services by connecting sellers with users. There are specific exclusions for certain sellers and platform operators based on defined criteria which are detailed below.

Whether or not the Regulations apply to staffing companies depends on whether they operate a platform which facilitates the connection between sellers and users for the provision of Relevant Services. Relevant Services include the provision of personal service to undertake time or task-based work for the benefit of a user but does not include services offered or provided agency workers. Platforms that engage and pays workers through their PAYE payroll are not subject to these Regulations.

A staffing company's client management system is not necessarily a Platform under the Regulations unless the work seekers are Reportable Sellers (i.e. trading as self-employed or outside IR35) and the Platform facilitates the connection between the Reportable Sellers and client hirers for the provision of Relevant Services. The specific functions and activities facilitated by the client management system are crucial in making this determination.

### What the Regulations do

The primary goal of the Regulations is to enhance tax compliance and transparency by ensuring accurate reporting to HMRC of income generated through platform-based activities.

The Regulations trigger:

- due diligence,
- record-keeping and
- reporting

obligations relating to payments made by 'Platforms' to Sellers (providers) of services (and goods).

The reporting obligations broadly apply to payments for the services provided by anyone in the UK paid via a Platform, where that Platform is tax resident and incorporated or managed in the UK.

The Regulations cover payments to persons **providing services on a self-employed basis**. Whilst they do not explicitly exclude agency workers, the Model Rules state that services provided through a legally recognised employment relationship with a Platform Operator (such as a staffing business) or a related Entity of the Platform Operator will not be a Personal Service nor a Relevant Service (as defined under the Model Rules) and accordingly a PAYE agency worker will not be a Reportable Seller.

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<sup>1</sup> Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy (oecd.org).

The Model Rules were developed by the Organisation for Economic Co-operation and Development (OECD), which the UK has signed up to. These Model Rules aim to create a standardised framework for reporting income earned by Sellers through digital platforms, to ensure tax compliance and transparency.

However there is no exclusion under the Regulations of staffing company operations per se. The requirements under the Regulations could include staffing companies supplying via a software enabled platform where the platform operated to connect a seller to an end user client. Each case will be fact specific and it will therefore be necessary look at your particular operating model to ascertain whether there is an obligation to report. It is also worth noting that these Regulations are aimed at capturing payments that wouldn't otherwise be reported to HMRC and staffing companies already have requirements to report to HMRC under existing reporting regimes.<sup>2</sup> Furthermore where a platform's software is exclusively for the purpose of processing payments in relation to Relevant Services it will not be a Platform for the purposes of these Regulations (see below).

Please note that there are financial penalties for non-compliance, which will remain with you even if you engage a third-party to assist with your obligations. Generally, an initial penalty will not exceed £5,000 and then, if failure continues after notice of the penalty, a further penalty not exceeding £600 for each subsequent day on which the failure continues.

### **A more detailed look at the Regulations**

1. The Regulations impose due diligence and reporting obligations on the:
  - **Platform** i.e. the software, (including websites and mobile apps), accessible by users (clients), which connects sellers (e.g. locum GPs/drivers/performers/ freelance contractors) to users for the provision of the seller's Services or the sale of the seller's Goods. For clarity, although the operations of the Platform may also include the collection and payment of Consideration (compensation in any form paid or credited to a Seller) in respect of Relevant Services, the **term Platform does not include software exclusively** allowing the:
    - processing of payments in relation to Relevant Services );
    - listing or advertising of Relevant Services; or
    - redirecting or transferring of users to a Platform without any further intervention in the provision of Relevant Services.
  - and
  - **Platform Operator** (i.e. entity which contracts with Sellers to make the platform available).
2. If you are a Platform, you become a **Reporting Platform Operator ("RPO")** if you are:
  - tax resident in the UK; and
  - incorporated in or have your place of management in the UK (or another jurisdiction on HMRC's list).
3. It is possible to be an **Excluded Platform Operator** in the following circumstances:
  - if the Platform's aggregate annual Consideration is less than EUR 1 million;
  - the Sellers do not derive a profit from the Platform; or
  - your Platform does not have Reportable Sellers under these Regulations because, for example, they are agency workers supplied through the Platform but paid subject to PAYE and NICs deductions.
4. In relation to your Platform's **Reportable Sellers** the following definitions apply:
  - **Seller** is a Platform user who is registered on the Platform. This is interpreted very broadly including where the Seller has created a profile/account and/or where a contractual relationship exists;

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<sup>2</sup> Income Tax (Pay As You Earn) (Amendment No.2) Regulations 2015: ESM2130 - Employment Intermediaries Reporting,

An “**Active Seller**” is any Seller that either provides Relevant Services during the Reportable Period or is paid or credited Consideration in connection with Relevant Services during the Reportable Period.

- **Reportable Seller** is an Active Seller who has provided **Relevant Services** in the **Reportable Period** (previous calendar year) and is tax resident in a **Reportable Jurisdiction** (UK or another jurisdiction identified by HMRC);
- **A Relevant Service** is the rental of immovable property, the rental of a means of transport or a Personal Service for Consideration:
  - **Personal Service** is a service involving **time or task-based work for the benefit of a user**.

The Model Rules note that the scope of these services is very wide and includes transportation, manual labour, tutoring, copywriting, data manipulation and clerical tasks, and both online and physical work.

## 5. Your obligations as a Reporting Platform Operator/RPO

### a. **Collect and verify information about Platform users and identify Reportable Sellers** (who are registered on the Platform and tax resident in the UK)

You should start collecting the following information in relation to existing users and any new users that register during the year:

- Name (including any personal service company ("PSC") limited company name);
- address;
- tax identification number ("TIN") (e.g. a national insurance number, a UTR for sole traders or company registration number) and jurisdiction of issuance; and
- for non-corporate users, date of birth.

This information must have been collected or confirmed within the 36 months preceding the 31 December 2024. This can be done by third-parties, but the legal obligation rests with you.

### b. **Record-keeping**

You must keep a record of the steps taken to comply with the Regulations and information collected for 5 years from 1 January 2025.

### c. **Reporting of information**

On or before the 31 January 2025, you must:

- i) issue a report on an electronic reporting system to HMRC relating to 1 January 2024 – 31 December 2024. (There is, however, a grace period of a further year (1 January 2026) to report on users who were already registered at the time you became an RPO i.e. on 1 January 2024);
- ii) have notified HMRC that you are a RPO or are relying on the Excluded Platform Operator exemption; and
- iii) have provided each Reportable Seller with the information reported to HMRC.

If your operation is not a Platform as defined you will not need to notify HMRC at all under these Regulations.

The information to be reported includes identification, tax jurisdiction and payment information in relation to the RPO, the Platform and each Reportable Seller (unless you have assurances that another RPO will report the required information in relation to a Reportable Seller).

It would be advisable, therefore, to keep a record of the amounts paid, credited, withheld or charged to each Reportable Seller throughout the year and of the number of services performed by each Reportable Seller.

**d. What is a platform obliged to do where the Regulations require it to 'verify' information?**

The context is that Regulation 3 of the Regulations says:

*Due Diligence and record-keeping*

3.—(1) *A reporting platform operator must establish and maintain procedures that are designed to—*

- (a) collect information about sellers,*
- (b) collect, where applicable, information about property listings,*
- (c) verify the information collected under sub-paragraphs (a) and (b), and*
- (d) identify reportable sellers in respect of each reportable period.*

**e. What does 'verify' mean?**

The Regulations do not define *verify* and instead refer to the need to follow the due diligence rules in the Model Rules

Section 2 part D of the Model Rules says:

- 1 *The Reporting Platform Operator must determine whether the information collected ...is reliable, using all records available to the Reporting Platform Operator, as well as any publicly available electronic interface to ascertain the validity of the \*TIN.*
- 2 *Notwithstanding [that], for the completion of the due diligence procedures ...the Reporting Platform Operator may determine whether the information collected ...is reliable using electronically searchable records available to the Reporting Platform Operator.*
- 3... *in instances where the Reporting Platform Operator has reason to know that any of the information items ...may be inaccurate by virtue of information provided by the tax administration of [jurisdiction], it must verify such information item using reliable, independent-source documents, data or information*

*\*Tax identification number or tax ID*

There used to be a UK system in which such copies could be certified locally at Post Offices. Each OECD country is supposed to have a "Government Verification Service" i.e. an electronic process made available to a Platform Operator for the purposes of ascertaining the identity and tax residence of an account holder. The UK system has however been closed and so this verification appears to be not currently available via a 'publicly available interface'. This evidently means that you don't have to use such an interface.

We therefore consider that *to verify* in the context of the Platform Reporting Regulations means that a platform is required to obtain (by asking the account holder):

- (i) the name;
- (ii) address; and
- (iii) TIN of the account holder; and
- (iv) copies of other documents supporting this (e.g., utility bills/passport/copy HMRC communication showing TIN).

HMRC's guidance adds to this by saying:

*RPOs are expected to consider the available information in the round. The overarching obligation is for the RPO to satisfy itself that the information it has collected is reliable. RPOs should look out for any discrepancies, inconsistencies or gaps in the information they have collected. Where any such issues are identified, the RPO is expected to take further steps to verify the information collected.*

If and when a "UK Government Verification Service" is relaunched then a platform would have to use that and not just rely on what has been sent by the account holder. Until then, we suggest that for the time being, **a platform should ensure the account holders:**

- i) confirm their name, address and tax ID in writing; and**
- ii) provide copies of other documents** (e.g., utility bills/passport/copy HMRC communication showing tax ID); and
- iii) (if, and only if, the platform has reasons for believing or suspecting the information or documents are inaccurate) attend:**
  - 1. in person with relevant documents or**
  - 2. a solicitor's office to get the solicitors firm to certify copies of the relevant documents confirming their name, address and tax ID**

There are other providers of verification services such as Lexis Nexis [IDU® | LexisNexis Risk Solutions](#) which may be sufficient for 3b.

We recommend you confirm to HMRC that that is the approach you are taking and to ask them to notify you if that is insufficient.

## 6. Legislation and guidance

- [The Platform Operators \(Due Diligence and Reporting Requirements\) Regulations 2023](#)
- Those regulations incorporate key provisions of [Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy](#) in particular in relation to defined terms i.e. who is a 'platform' etc
- HMRC guidance [Reporting rules for digital platforms - GOV.UK](#)

## 7. Penalties

If you do not follow the rules, you may be charged 3 types of penalty:

- a penalty of up to £1,000 for not telling HMRC if you're an RPO or Excluded Platform Operator;
- an initial penalty of up to £5,000 and a continuing penalty of up to £600 per day for not reporting by the 31 January yearly reporting deadline

- a penalty of up to £100 for each inaccurate, incomplete, or unverified seller's record – which could mount up in a high volume situation.

**Osborne Clarke LLP 07 January 2025**

*This note is for guidance only and does not constitute legal advice.*