

Introduction of Sec. 22g German VAT Act - Special obligations for payment service providers

The German government has presented the first draft of Annual Tax Act 2022 including the new general recording obligations of payment service providers in the context of the transposition of the EU Directive 2020/284 of 18 February 2020.

On 28 July 2022, the German government's draft paper of the Annual Tax Act ("Jahressteuergesetz – JStG") 2022 was published. In addition to the changes regarding the so-called register cases, the special expenses deduction for pension expenses and new provisions in the Tax Oasis Defense Act, the EU Directive 2020/284 is also to be transposed into national law.

Payment service providers will therefore be subject to additional recording obligations. In accordance with the directive, the disclosure requirements are to be applied as of 1 January 2024. Payment service providers are therefore expected to have one year after the adoption of the Annual Tax Act 2022 to take measures to comply with the new recording and reporting obligations in good time.

The draft of the Federal Government is strongly based on the wording of the Directive and incorporates it into German legislation, in particular considering the Payment Services Supervision Act [Zahlungsdienstaufsichtsgesetz – "ZAG"].

Background

In the context of the increasing cross-border trade of goods and services, the EU is aiming to limit VAT fraud.

The focus is on cases where VAT is owed in one member state (e.g., due to the reverse-charge procedure or an intra-community supply) and the supplier is located in another member state or in a third country.

In order to be able to identify fraudulent companies more quickly, the records of the payment service providers are to be evaluated and compared with the reported VAT information. The information will then be made available to all member states via the central information system CESOP, which is managed by the EU Commission.

Above all, the information should make it possible to determine the payment service provider, the payee's and the payer's place, as this is fundamental for VAT evaluation.

What should be subject to reporting?

All cross-border payments made by a payer (recipient of services for VAT purposes) in an EU member state to a payee (i.e., the executive entrepreneur from a VAT perspective) in another member state or in a third country. According to Sec. 22g para. 3 UStG-E, payments for which at least one of the payment service providers of the payee is in the EU are excluded.

In this case, only the payment service provider of the payer should be subject to a reporting obligation (identification using the BIC). The notification should be made in case that more than 25 cross-border payments are made to the same payee (threshold value per Member State and payee). This is intended to maintain proportionality and to record only payments that indicate an economic activity.

Who should be subject to the reporting obligation?

Payment service providers as defined in Sec. 1 para. 1 sen. 1 no. 1 to 3, para. 4 sentence 2 and para. 5 ZAG are to be subject to the reporting obligation, which includes both domestic payment service providers, domestic branches of foreign payment service providers and foreign payment service providers (e.g., via agents in Germany).

Reporting periods and deadlines

The reports are to be submitted electronically to the German Federal Tax Office [Bundeszentralamt für Steuern – "BZSt"] for each calendar quarter. The deadline shall end

at the end of the following calendar month.

Incorrect or incomplete reports should be submitted within one month after the relevant information has been received.

Documents and information must be kept for at least 3 years after the end of the respective calendar year.

Which information must be reported?

In the draft, the federal government distinguishes between mandatory information that is required to identify the location of the payer and payee, and between information which to be recorded and reported, if available.

Mandatory information includes the name of the payee's company, its IBAN, the BIC of the payee's payment service provider, the amount, the currency, the date and time of the transaction, and the country of origin of the payment. If available, information on the VAT number, other tax numbers, the payee's address, references shall be reported and whether the payment was initiated from the payer's premises.

Next steps

Payment service providers should already start dealing with the new reporting requirements and evaluate which data needs to be collected and processed for the reports. Due to the high volume of data, technical solutions should be considered.

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