



## Ministry of Finance on obligations for payment service providers applicable from 01.01.2024

### 1 Background

As from 01.01.2024, special reporting obligations apply for payment service providers in accordance with sec. 22g of the German VAT Act. Payment service providers must now record certain information regarding the payment services which they provide for the processing of cross-border payments and report them to the Federal Central Tax Office (BZSt). This data, along with the information collected in other Member States, is recorded and analysed in a Central Electronic System of Payment information (CESOP). Sec. 22g of the German VAT Act already contains quite detailed definitions of the scope and extent of these new obligations. In its letter dated 28 December 2023, the German Federal Ministry of Finance (BMF) has now commented further on the application of the regulation.

### 2 Explanations contained in the BMF's letter

First of all, the BMF provides a clear overview of the scope of application of the regulation, which is defined in the law in a rather complex manner due to the reference technique. In addition, the letter goes beyond the wording of the law to explain the scope of sec. 22g of the German VAT Act. The BMF refers to the CESOP guidelines published by the EU Commission on selected issues, but emphasizes that these are not legally binding as such. With regard to the reporting process, the BMF refers, in part, to the BZSt communication manual.

The BMF clarifies that the obligations under sec. 22g of the German VAT Act apply to credit institutions, E-money institutions, payment institutions (sec. 1 para. 1 sent. 1 no. 1 to 3 of the German Payment Services Supervision Act, ZAG) and post-office giro institutions that are based in an EU or EEA State insofar as they provide payment services in Germany. This



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applies regardless of whether the payment services are provided from the provider's registered office in Germany, a branch office in Germany, or by way of cross-border services or via an agent, without being domiciled in Germany. Payment services relevant to sec. 22g of the German VAT Act are payment transactions, acquiring of payment transactions, and money remittance (sec. 1 para. 1 sent. 2 no. 3 to 6 of the ZAG). These also include E-money vouchers. Payments within the meaning of sec. 22g of the German VAT Act are payment transactions that result in the provision, transfer or withdrawal of funds. Payments made in crypto values are not included.

Only cross-border payments from a payer in a Member State to a payee in another state are subject to a reporting duty. The location is determined using the IBAN of the payment accounts or using another identifier which unambiguously indicates the identity and location of the payer or payee. If an E-money provider has information according to which the IBAN differs from the actual location of the payee specified during onboarding, then the BMF requires that preference should be given to these more precise indicators. The selection decision should be documented. If the payment service provider does not have any identifiers for unambiguous identification, it must take into account all information available that provides an indication of the place of residence (e.g. merchant address for payees and BIN for payers).

The reporting obligation shall only apply if a payment service provider executes more than 25 cross-border payments to the same payee in the course of a calendar quarter. Exceeding the threshold must be calculated individually for the payment services provided in each Member State. If a payee has multiple identifiers (e.g. IBAN for credit transfers, merchant address for card payments and an E-money account), the payments must be aggregated. All information available to the payment service provider (e.g. VAT-ID, ID-No. in accordance with sec. 139b of the German Fiscal Code, name, address, IP address, email address, website, contracts) must be taken into account when assessing whether there are multiple identifiers. However, payment accounts are only to be aggregated if they are held by the identical legal entity. Refunds that can be clearly linked to a payment must be deducted when calculating cross-border payments. Refunds that cannot be clearly assigned to a payment must be taken into account as a payment and are included in the calculation of the threshold. If the threshold is not exceeded, the payment service provider can submit a "nil report" to the BZSt.

Furthermore, the BMF makes statements on the information to be transmitted, as well as the penalties of up to EUR 5,000. It clarifies that the existence and accuracy of the data is determined by the information available to the payment service provider. Investigations are not required.

### **3 Extended deadline for reporting the first calendar quarter of 2024**

The recorded data must be transmitted to the BZSt in accordance with the officially required data set by the end of the month following the calendar quarter. However, with regard to the report for the first calendar quarter of 2024, the BMF does not object to the report being transmitted by 31 July 2024.

### **4 Consequences for the practice**

The BMF addresses various existing uncertainties regarding the handling of sec. 22g of the German VAT Act and makes it clear that the CESOP guidelines can be used as an interpretation aid. Affected payment service providers should familiarize themselves with the BMF letter as soon as possible. The granted deadline extension gives them more time to submit their first report. Nevertheless, they should ensure well in advance that their recording and reporting processes comply with the current requirements.