

New VAT regulations for payment service providers

I. New regulations for payment service providers as of January 2024

The newest draft bill amending the Value Added Tax Act and certain other acts provides for changing the VAT Act to implement Council Directive (EU) 2020/284 of 18 February 2020 amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers. As Directive 2020/284 should be implemented into the Polish legal system by 31 December 2023, the draft provides that the regulations will go into effect as of 1 January 2024. It should be noted that the new regulations supplement the solutions contain in the so-called VAT e-commerce package in the context of the Commission's digital single market strategy.

II. New records to be provided to tax authorities every quarter

Under the new regulations, payment service providers located in the EU will be obligated to keep records and to provide them after each calendar quarter if the following conditions are met at the same time: firstly, when the funds are transferred from a payer in a member state (usually the buyer of goods/services) to a payee in another member state or third country (usually the seller of goods/services); secondly, when in the course of a calendar quarter, in a given member state a payment service provider makes more than 25 payments to the same payee.

III. New obligations for defined payment service providers

The draft bill provides that the following are payment service providers: domestic banks, branches of foreign banks; credit institutions; electronic money institutions and branches of electronic money institutions (in cases when the branch is located in a member state, and the place of establishment of the electronic money institution is outside of the member state, as long as the payment services provided by the branch are linked to the issuance of electronic money); branches of entities providing post office payment services in a member state other than Poland, in accordance with the laws of that state; payment institutions; cooperative savings and credit unions or the National Association of Co-operative Savings and Credit Unions. The obligation to keep records will not, however, apply to payment service providers located outside of the European Union, as those entities are not covered by the PSD2 Directive. The regulations provide that for the purposes of complying with the recordkeeping requirements, a payment service provider will be considered located in a member state when the provider's BIC or identification code corresponds to that member state.

The government's draft of amendments to the VAT Act and certain other acts has been sent to the Sejm. Payment service providers will be required to keep quarterly records of cross-border payments and payees. The new obligations are to help with combatting VAT fraud in e-commerce and should go into effect at the start of 2024.



IV. Payment services definition based on the provisions of EU Directive PSD2

Reporting will apply to payment services. Payment services are specific types of business activities defined in Annex I to Directive PSD2. In consequence, payment services are defined as activities consisting of: execution of payment transactions, including transfers of funds to a payment account with the user's provider or another provider; execution of payment transactions where the funds are debited against a credit line made available to the user; issuing of payment instruments; enabling acceptance of payment instruments and execution of payment transactions initiated with the payer's payment instrument by or through the acceptor, consisting in particular of handling authorizations, sending of the payer's or acceptor's payment orders to the issuer of the payment instrument or payment systems in order to transfer the funds due to the acceptor; provision of money order services.

V. Records to only cover payees that exceed 25 payments

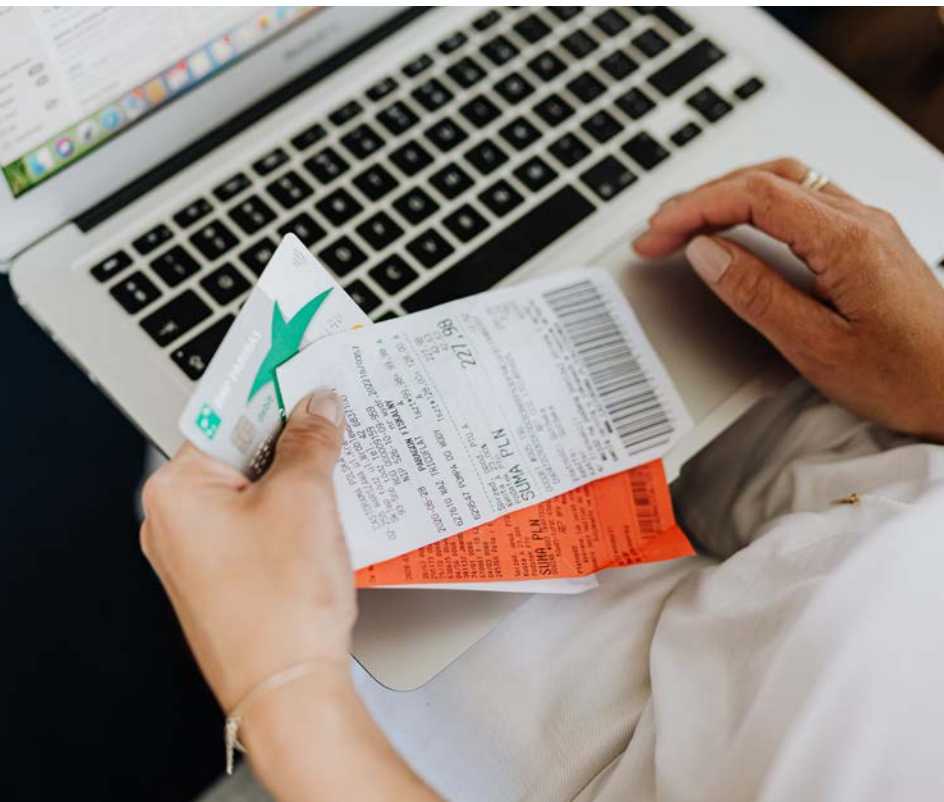
As mentioned above, the amendments introduce new recordkeeping obligations for payment service providers. A payment service provider will have to keep a record on a given payee in order to share it with the tax authorities only if the total number of payments received by the payee exceeds 25 in a calendar quarter (this is also the reporting period for payment service providers). After exceeding 25 cross-border payments to the same payee in the course of a quarter, payment service providers will have to retain information on all of the payments received by the given payee, without distinguishing if the payer is a consumer or a taxable person.

VI. Clear determination of payment number threshold

The regulations are to provide that the threshold of 25 cross-border transactions is to be calculated separately for each member state where payment services were performed (payment service providers calculate the threshold at member state level, based on the location where they provide payment services). The threshold is calculated by taking into account the payment services provided by the payment service provider in one member state. This means that the threshold applies to individual member states, rather than being a global threshold (e.g. if a bank with its place of establishment in Poland has branches in Germany, and those branches together execute more than 25 payments for the same payee, a record should be kept and information provided to Germany). Secondly, the calculation is performed by identifier or identification code of the payee. Whereas where the payee has several identifiers, and the payment service provider is able to identify the holder of several accounts and the person hiding behind other identifiers as the same payee, a calculation should be made for each payee.

VII. Intra-EU payments exempt from recordkeeping

The draft exempts payment service providers from the recordkeeping obligation with regard to intra-EU transactions. It also specifies that payment service providers will be required to keep a record of cross-border transactions only if none of the payment service providers of the payee are located in a member state (so-called non-EU payment). This is because it is possible that the performance of one payment from payer to payee involves several payment service providers (several transfers of funds are made between individual payment service providers). If one of the payment service providers in this chain is required to keep a record, then the payment service provider of the payer is not required to keep such a record, even if some of the payment service providers in the chain have their place of establishment outside the EU.



VIII. Accurate identification of payer and payee location

The draft amendments formulate the rules that payment service providers must apply in order to identify the location of payers and payees. These rules do not reference the place of taxation, but rather the location of the payees and payers for the purpose of complying with the recordkeeping obligation. Location does not mean the place of establishment or permanent or habitual place of residence of the payee or payer. Payment service providers are third parties in the context of the contractual relationship between taxable persons supplying goods and services and their consumers. For this reason, information available to payment service providers while they perform payment services is not necessarily the same as the information held by taxable persons about their consumers, or the information that is necessary to determine the location of a taxable transaction. Location only determines the payment service provider's obligation to keep a record.

IX. Payment account identifier most important in determining location

The new regulations provide that considered to be the payer's location is the member state corresponding to the payer's payment account identifier. The identifier of an individual payment account in a member state is the IBAN - international bank account number. If a payment is performed through a payment service not covered by this regulation (which only applies to transfer and payment orders in euro), the payer's location may be determined using another payment account identifier (e.g. e-Wallet does not issue an IBAN, but issues payment account numbers - such entities must be able to contact their clients whether they are payers or payees). There are also payment transactions (money orders), where funds are transferred to a payee without creating a payment account attributable to the payer. Where funds are not transferred to any payment account, considered to be the payer's location is the member state corresponding to another identifier that unambiguously identifies and gives the location of the payer.

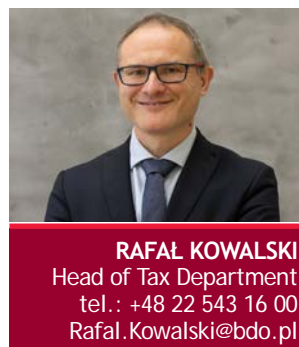
X. Clear payee location rules

Whereas considered to be the location of the payee is the member state or third country corresponding to the identifier of the payment account (IBAN) to which funds are transferred. Where funds are transferred to a payment account identified by an identifier other than the IBAN, or when they are not transferred to any payment account, the payee's location is considered to be the member state or third country corresponding to another identifier that unambiguously identifies and gives the location of the payee. Whereas in the absence of such identifiers, the location of the payee is determined based on the identifier of the payment service provider acting on behalf of the payee. The identifier of a payment service provider is the BIC or another business identification code that unambiguously identifies and gives the location of the payment service provider.



XI. Record to include payment and payment party details

The data in payment service provider records are to include the payment service provider's identifying details, as well as the identifying details of the payee and information on the payments received by the payee (such as the amount and date), as well as on any refunds. Under the new regulations, the records to be kept by payment service providers should include the following information: the BIC or another business identification code that unambiguously identifies the payment service provider; the first and last name, or business name of the payee as it appears in the records of the payment service provider; the number used to identify the payee for tax or value added tax purposes, or another number used to identify the payee for tax purposes, if available; the IBAN, and if the IBAN is not available - another identifier that unambiguously identifies and gives the location of the payee; the BIC or another business identification code that unambiguously identifies and gives the location of the payment service provider acting on behalf of the payee where the payee receives funds without having any payment account; the address of the payee, if available, as it appears in the records of the payment service provider; the details of cross-border payments and payment refunds identified as relating to cross-border payments, as referred to in the act.



RAFAŁ KOWALSKI
Head of Tax Department
tel.: +48 22 543 16 00
Rafal.Kowalski@bdo.pl

XII. Records to be retained for at least three years

Payment service provider records will be retained for three years from the end of the tax year of the date of payment. The records will be made available in a standard electronic format to the home member state of the payment service provider, or to the host member states when the payment service provider provides payment services in member states other than its home member state, no later than by the end of the month following the end of the quarter to which the information pertains. In other words, the payment service provider shares its records in the member state of its place of establishment. Payment service providers will have to share information with host member states if they provide services in other member states with or without a branch.



The information presented herein does not constitute comprehensive information or opinion. Consult your adviser before making any decisions.

BDO is an international network of independent audit and advisory firms. Service provision within the BDO network is coordinated from the Brussels global office. BDO's beginnings go back to 1963. We have been present in Poland since 1991. We have 5 offices in: Warsaw, Kraków, Poznań, Wrocław and Katowice.

BDO has for years been recognized in prestigious rankings of the activities performed by its Audit and Tax Advisory Departments, including most recently:

The last distinctions for the company are related to the Rankings:

Companies and Tax Advisors of Dziennik Gazeta Prawna for 2021:

■ **1st place The Best Tax Advisor in the category of medium-sized companies**

The 2021 rankings prepared by the Rzeczpospolita and Parkiet dailies:

■ **3rd Most Active Firm on the Stock Exchange**

■ **4th Best Audit Firm**

■ **5th Best Auditor of Listed Companies**

BDO spółka z ograniczoną odpowiedzialnością sp.k., ul. Postępu 12, 02-676 Warszawa;
tel.: +48 22 543 1600, fax: +48 22 543 1601, e-mail: office@bdo.pl