VERŻJONI ELETTRONIKA

L.N. 272 of 2023

VALUE ADDED TAX ACT
(CAP. 406)

Value Added Tax (Reporting Obligations for Payment Service Providers) Regulations, 2023

IN EXERCISE of the powers conferred by article 55A and 75 of the Value Added Tax Act, the Minister responsible for finance, has made the following regulations:-

Citation, scope and commencement.

1. (1) The title of these regulations is the Value Added Tax (Reporting Obligations for Payment Service Providers) Regulations, 2023.

(2) These regulations transpose the provisions of Article 1 of Council Directive (EU) 2020/284 of 18 February 2020 amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers.

(3) The purpose of these regulations is to require payment service providers to keep sufficiently detailed information of payees and payments in relation to the payment services they provide and to submit such information to the Commissioner to enable the competent authorities of the Member States to carry out controls of the supplies of goods and services which, in accordance with the provisions of Title V of Council Directive 2006/112/EC, are deemed to take place in a Member State, in order to achieve the objective of combating VAT fraud.

(4) These regulations shall come into force on 1st January 2024.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires:

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"the Act" means the Value Added Tax Act;

"BIC" shall have the meaning assigned to it in point (16) of Article 2 of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/ 2009;

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"CESOP" shall mean the "central electronic system of payment information" established by Council Regulation (EU) 2020/283 of 18 February 2020 amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud;

"home Member State" shall have the meaning assigned to it in article 2(1) of the Financial Institutions Act; Cap. 376.

"host Member State" shall have the meaning assigned to it in article 2(1) of the Financial Institutions Act; Cap. 376.

"IBAN" shall have the meaning assigned to it in point (15) of Article 2 of Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/ 2009;

"payee" shall have the meaning assigned to it in article 2(1) of the Financial Institutions Act; Cap. 376.

"payer" shall have the meaning assigned to it in article 2(1) of the Financial Institutions Act; Cap. 376.

"payment" means a "payment transaction" or a "money remittance" as defined in article 2(1) of the Financial Institutions Act, subject to the exclusions referred to in article 3(2A) of that Act; Cap. 376.

"payment account" shall have the meaning assigned to it in article 2(1) of the Financial Institutions Act; Cap. 376.

"payment service provider" means any of the categories of payment service providers listed in paragraphs (a) to (e) of the definition "payment service provider" included in article 2(1) of the Financial Institutions Act or a natural or legal person benefitting from an exemption in accordance with Article 32 of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC; Cap. 376.

"payment service" means any of the business activities listed in points (c) to (f) of paragraph 2 of the Second Schedule to the Financial Institutions Act; Cap. 376.

(2) In these regulations, save as provided in sub-regulation (1),

all words and phrases shall have the meaning as prescribed in the Act.

Scope of the requirement to keep information.

3. (1) Payment service providers whose home Member State or host Member State is Malta shall keep detailed information on payees and on payments in relation to the payment services they provide for each calendar quarter in Malta as set out in these regulations.

(2) The requirement referred to in sub-regulation (1) shall apply only to payment services provided as regards cross-border payments. A payment shall be considered a cross-border payment when the payer is located in a Member State and the payee is located in another Member State, in a third territory or in a third country.

(3) For the purposes of these regulations and without prejudice to the provisions of the Third Schedule to the Act, the location of the payer shall be considered to be in the Member State corresponding to the IBAN of the payer's payment account or any other identifier which unambiguously identifies, and gives the location of the payer:

Provided that where the payment service provider has various identifiers available that provide a different location for the payer, the identifier which best reflects the location of the payer shall be chosen:

Provided further that in the absence of the identifiers referred to in the first paragraph of this sub-regulation, the Member State corresponding to the BIC or any other business identifier code that unambiguously identifies, and gives the location of the payment service provider acting on behalf of the payer shall be considered to be the location of the payer.

(4) For the purpose of these regulations and without prejudice to the provisions of the Third Schedule to the Act, the location of the payee shall be considered to be in the Member State, third territory or third country corresponding to the IBAN of the payee's payment account or any other identifier which unambiguously identifies, and gives the location of the payee:

Provided that where the payment service provider has various identifiers available that provide a different location for the payee, the identifier which best reflects the location of the payee shall be chosen:

Provided further that in the absence of the identifiers referred to in the first paragraph of this sub-regulation, the Member State, third territory or third country corresponding to the BIC or any other business identifier code that unambiguously identifies and gives

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the location of the payment service provider acting on behalf of the payee shall be considered to be the location of the payee.

Registration of payment service providers.

4. (1) A payment service provider whose home Member State or host Member State is Malta shall notify the Commissioner by applying to be registered as a payment service provider for the purpose of these regulations by not later than twenty-five (25) days from the date of coming into force of these regulations or the date Malta becomes its home Member State or host Member State as applicable, whichever is the later.

(2) The notification in accordance with this regulation shall be submitted electronically directly through the established web portal designated by the Commissioner for the purpose of reporting under the central electronic system of payment information ("CESOP"), and shall contain the information requested therein.

(3) A payment service provider registered under this regulation shall ensure that the information requested upon registration is updated within fifteen (15) days from the date of occurrence of any changes in said information by means of an electronic submission through the web portal mentioned in sub-regulation (2).

(4) A payment service provider registered under this regulation shall within fifteen (15) days from the date Malta ceases to be its home Member State or host Member State notify the Commissioner by means of an electronic submission through the web portal mentioned in sub-regulation (2) to cancel its registration.

(5) Without prejudice to sub-regulation (1), where a notification in accordance with sub-regulation (4) is made, the Commissioner shall cancel the registration of that payment service provider with effect from the date the notification in accordance with sub-regulation (4) is received:

Provided that where the Commissioner has reason to believe that a notification in accordance with sub-regulation (4) should have never been made by the payment service provider, the registration in accordance with this regulation shall be deemed to have never been cancelled:

Provided further that this shall not prejudice the payment service provider’s right to contest a decision taken by the Commissioner in terms of the foregoing proviso, in accordance with paragraph (j) of article 44 of the Act.

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Applicability of the requirement to keep information.

5. (1) The requirement to which payment service providers are subject in accordance with regulation 3 shall apply where, in the course of a calendar quarter, a payment service provider provides payment services corresponding to more than twenty-five (25) cross-border payments to the same payee:

Provided that the number of cross-border payments referred to in the first paragraph to this sub-regulation shall be calculated by reference to the payment services provided by the payment service provider per Member State and per payee identifier as referred to in regulation 3(4):

Provided further that where the payment service provider has information that the payee has several identifiers the calculation shall be made per payee.

(2) The requirement laid down in regulation 3 shall not apply to payment services provided by the payment service providers of the payer as regards any payment where at least one (1) of the payment service providers of the payee is located in a Member State, as shown by that payment service provider's BIC or any other business identifier code that unambiguously identifies the payment service provider and its location.

(3) Notwithstanding the provisions of sub-regulation (2), the payment service providers of the payer shall include, in the calculation referred to in sub-regulation (1), the payment services referred to in sub-regulation (2).

Storage of information.

6. (1) Where the requirement for payment service providers laid down in regulation 3 is applicable in accordance with regulation 5, the information shall be kept by the payment service provider in an electronic format for a period of three (3) calendar years, from the end of the calendar year of the date of the respective payment covered by this requirement, and shall contain the following information:

(a) the BIC or any other business identifier code that unambiguously identifies the payment service provider;

(b) the name or business name of the payee, as it appears in the records of the payment service provider;

(c) any available VAT identification number or other national tax number of the payee;

(d) the IBAN or, if the IBAN is not available, any other identifier which unambiguously identifies, and gives the location of the payee;

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(e) the BIC or any other business identifier 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;

(f) any available addresses of the payee as they appear in the records of the payment services provider, including e-mail addresses, IP addresses, and web-page addresses;

(g) the details of any cross-border payment as referred to in regulation 3;

(h) the details of any payment refunds identified as relating to the cross-border payments referred to in paragraph (g).

(2) The information referred to in paragraphs (g) and (h) of sub-regulation (1) shall contain the following details:

(a) the date and time of the payment or of the payment refund;

(b) the amount and the currency of the payment or of the payment refund;

(c) the Member State of origin of the payment received by or on behalf of the payee, the Member State of destination of the refund, as appropriate, and the information used to determine the origin or the destination of the payment or of the payment refund in accordance with these regulations;

(d) any reference which unambiguously identifies the payment;

(e) where applicable, information that the payment is initiated at the physical premises of the merchant.

(3) Without prejudice to the other provisions of these regulations, sub-regulations (1) and (2) shall not apply where a payment service provider registered in accordance with regulation 4 has no information required to be reported for a calendar quarter in terms of the other provisions of these regulations.

Submission of information.

7. (1) Where the requirement for payment service providers laid down in regulation 3 is applicable in accordance with regulation 5, the information that shall be kept in accordance with regulation 6 shall be submitted for every calendar quarter by means of an electronic standard form to the Commissioner through the designated web portal

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mentioned in regulation 4(2), or through other means as may be approved by the Commissioner.

(2) The electronic standard form referred to in sub-regulation (1) of this regulation shall be a form in a standardised XML format in accordance with the data table in the Annex to Commission Implementing Regulation (EU) 2022/1504 of 6 April 2022 laying down detailed rules for the application of Council Regulation (EU) No 904/2010 as regards the creation of a central electronic system of payment information (CESOP) to combat VAT fraud.

(3) The information required to be submitted in accordance with sub-regulation (1) shall be submitted by no later than the 28th day of the month following the calendar quarter to which the information relates.

(4) Upon submission, the Commissioner may notify the payment service provider that the information submitted is valid for the purpose of onward submission to the CESOP, or otherwise:

Provided that where the payment service provider is notified before the deadline stipulated in sub-regulation (3), that the information submitted is not valid, the payment service provider shall take the necessary action to ensure that the information is resubmitted correctly in its entirety and in accordance with these regulations by the deadline stipulated in sub-regulation (3). Upon submission, the procedure laid down in this sub-regulation shall apply.

(5) Notwithstanding any verification by the Commissioner in accordance with sub-regulation (4), the Commissioner may also notify the payment service provider to make any corrections as may be necessary to the information submitted in accordance with these regulations. Any such corrections shall be submitted within fifteen (15) days from the deadline stipulated in sub-regulation (3) or the date of a notification in terms of this sub-regulation, whichever is the later.

(6) For the purpose of this regulation, the Commissioner may determine whether a resubmission with corrections of the entire information submitted is required or whether it is only the information subject to corrections which is required to be submitted.

(7) Where a payment service provider registered in accordance with regulation 4 has no information required to be reported for a calendar quarter in accordance with the other provisions of this regulation, it shall be required to notify the Commissioner through the submission of information to this effect through the web portal mentioned in sub-regulation (2) of regulation 4, or through any other

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means as may be approved by the Commissioner.

(8) The Commissioner reserves the right to store the information collected in accordance with these regulations.

Other information.

8. (1) Where the Commissioner has reasonable grounds to suspect that any person is involved, directly or indirectly, in VAT fraud, the Commissioner may request a payment service provider, in accordance with the requirement laid down in regulation 3, to provide the Commissioner within a date established by the Commissioner, which shall be not less than fifteen (15) days from the date of service of such request, with any such information and documentation which the payment service provider may have relating to payment services provided to that person for any period determined by the Commissioner, but not being a period commencing earlier than six (6) years from the date of such request.

(2) Any payment service provider who receives such request shall provide the Commissioner with the information demanded in the request and this notwithstanding anything to the contrary in the Act, in the Professional Secrecy Act, any other obligation of secrecy or confidentiality, or any other restriction relating to the disclosure of information whether arising from a provision of law or any agreement or other arrangement.

Cap. 377.

(3) The information which may be requested by the Commissioner in terms of this regulation shall be limited to the type of information specified under paragraphs (a) to (g) of sub-regulation (1) and paragraphs (a) to (e) of sub-regulation (2) of regulation 6 and shall be submitted to the Commissioner in the same manner as stipulated in regulation 7 or in a manner as may be directed by the Commissioner.

(4) If the payment service provider in receipt of a request in accordance with this regulation does not have any information to report, he shall inform the Commissioner accordingly and shall have no further obligations in accordance with this regulation.

(5) The rights of the data subject referred to in regulation 4 of the Restriction of the Data Protection (Obligations and Rights) Regulations, in particular the right of access, shall be restricted, partially or completely, where such a restriction is necessary and proportionate for a payment service provider to adhere to his obligations in accordance with this regulation.

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(6) A payment service provider and any associate shall not disclose to any person, whatsoever the fact that the Commissioner has requested information, or that information has been delivered or may be delivered to the Commissioner in accordance with this sub-

regulation. Any such disclosures shall constitute an offence and shall on conviction be liable to a fine (*multa*) of not less than fifty thousand euro (€50,000) and not more than one-hundred thousand euro (€100,000), except for disclosures made in the following circumstances:

(a) disclosures to the Commissioner or to a person authorised by the Commissioner;

(b) disclosures made by the payment service provider to an associate or by an associate to another associate that are necessary in order for it to comply with the Commissioner's request for information pursuant to this sub-regulation;

(c) disclosures made in the course of proceedings instituted in any court or tribunal or administrative body against the payment service provider or associate to the extent that the disclosures are required for the proper defence of the payment service provider or associate;

(d) disclosures made in the course of any proceedings in any court or tribunal, or to any administrative body or authority, as long as a waiver for such disclosure has been given in writing by the Commissioner.

For the purpose of this sub-regulation, "associate" means an employee, holder of office, representative, or delegate of the payment service provider but shall not include the person or any of the persons whose details are indicated in the request issued pursuant to this regulation.

Use of information.

9. (1) The Commissioner shall transmit the information collected pursuant to regulation 7 in accordance with Article 24b of Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax.

(2) Without prejudice to sub-regulation (1), any information obtained by the Commissioner in terms of these regulations may be used by the Commissioner for the purpose of any investigation being carried out in connection with VAT fraud, evasion or avoidance, or in the context of any proceedings under the Act:

Provided that the Commissioner shall keep confidential any information provided to him by the payment service provider in terms of these regulations and shall not disclose such information to any other person except where the Commissioner is bound at law to effect such disclosure:

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Provided further that the Commissioner may report any act or failure by the payment service provider to the relevant regulatory authority which issued a licence or authorisation to such payment service provider.

Delegation.

10. (1) Payment service providers responsible for submitting any information or notification required by these regulations may delegate the task of submitting the required information or notifications to an appointed third party on their behalf. Such delegation shall not effect in any manner the obligations of the payment service provider to report such information or be deemed to shift in any way any liability to the appointed third party.

(2) Any payment service provider who delegates the task of submitting any information or notification required by these regulations in accordance with sub-regulation (1) shall ensure:

(a) to notify the Commissioner of such delegation by means of an electronic submission through the designated web portal mentioned in regulation 4(2) and provide such details as regards the delegated third party as may be requested;

(b) that the appointed third party is provided with all information necessary to fulfil their delegated task:

Provided that the Commissioner reserves the right to accept, or otherwise, any third party appointed in terms of this regulation and such decision shall not be contested in any appeal.

Penalties for non-compliance.

11. (1) Failure by any payment service provider to submit the information or notifications required within the time limits set out in these regulations shall be liable to an administrative penalty in accordance with article 38(2)(c) of the Act:

Provided that this shall not prejudice the payment service provider's right to question the imposition of any such administrative penalty in accordance with paragraph (k) of article 44 of the Act.

(2) In addition, and without prejudice to any administrative penalties incurred in terms of sub-regulation (1), the failure by any payment service provider to adhere to any of the requirements laid down by these regulations subsequent to two (2) electronic reminders sent by the Commissioner, in relation to the same required submission, to a payment service provider over a three (3) month period commencing on the date the payment service provider was required to submit the required information or notification in accordance with these regulations, or where the information submitted by the payment service provider is found to be incorrect in such a way that it is

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misleading, deceitful or false, every senior managing official of such payment service provider shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) of not less than ten thousand euro (€10,000) and not more than thirty thousand euro (€30,000) for each offence and, on a request by the prosecution, the court shall order the offender to comply with the law within a time sufficient for the purpose of these regulations, but in any case not exceeding three (3) months, and in default the offender shall be liable to the payment of a further fine (*multa)* of fifty euro (€50) for every day that the default continues after the lapse of the time fixed by the Court:

Provided that where a payment service provider is convicted of an offence against this sub-regulation, that payment service provider shall not be guilty of an offence against the other provisions of the Act in relation to the same offence.

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