



STATUTORY INSTRUMENTS.

**S.I. No. 650 of 2023**

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EUROPEAN UNION (VALUE-ADDED TAX) REGULATIONS 2023

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I, MICHAEL MCGRATH, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Council Directive 2006/112/EC of 28 November 2006<sup>1</sup>, as amended by Council Directive (EU) 2020/284 of 18 February 2020<sup>2</sup>, hereby make the following regulations:

1. These Regulations may be cited as the European Union (Value-Added Tax) Regulations 2023.
2. These Regulations come into operation on 1 January 2024.
3. The Value-Added Tax Consolidation Act 2010 (No. 31 of 2010) is amended by the insertion of the following Part after Part 9:

**“PART 9A**  
**REPORTING OBLIGATIONS OF CERTAIN PAYMENT  
SERVICE PROVIDERS**

**Interpretation**

**85A.** (1) In this Part –

‘BIC’ has the same meaning as it has in point (16) of Article 2 of the SEPA Regulation;

‘cross-border payment’ shall be construed in accordance with section 85B;

‘home Member State’ has the same meaning as it has in point (1) of Article 4 of the Payment Services Directive;

‘host Member State’ has the same meaning as it has in point (2) of Article 4 of the Payment Services Directive;

‘IBAN’ has the same meaning as it has in point (15) of Article 2 of the SEPA Regulation;

‘payee’ has the same meaning as it has in point (9) of Article 4 of the Payment Services Directive;

‘payer’ has the same meaning as it has in point (8) of Article 4 of the Payment Services Directive;

Services Directive;

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<sup>1</sup> OJ No. L347, 11.12.2006, p. 1.

<sup>2</sup> OJ No. L62, 2.3.2020, p. 7.

‘payment account’ has the same meaning as it has in point (12) of Article 4 of the Payment Services Directive;

‘Payment Services Directive’ means Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015<sup>3</sup> 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;

‘payment service provider’ means any of the categories of payment service providers listed in points (a) to (d) of Article 1(1) of the Payment Services Directive or a natural or legal person benefiting from an exemption in accordance with Article 32 of that Directive;

‘payment service’ means any of the business activities set out in points (3) to (6) of Annex I to the Payment Services Directive;

‘payment’ means, subject to the exclusions provided for in Article 3 of the Payment Services Directive, a ‘payment transaction’ as defined in point (5) of Article 4 of that Directive or a ‘money remittance’ as defined in point (22) of Article 4 of that Directive;

‘SEPA Regulation’ means Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012<sup>4</sup> establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009, as amended by Regulation (EU) No 248/2014 of the European Parliament and of the Council of 26 February 2014<sup>5</sup>.

(2) Other than a word or expression defined in subsection (1), a word or expression which is used in this Part and is also used in Section 2a of Chapter 4 of Title XI of the VAT Directive, has unless the context otherwise requires, the same meaning in this Part as it has in that Section of the VAT Directive.

### **Meaning of ‘cross-border payment’**

**85B.** (1) For the purposes of this Part, a cross-border payment is a payment in respect of which –

- (a) the payer is located in a Member State, and
- (b) the payee is located in another Member State, in a third territory or in a third country.

(2) For the purposes of subsection (1)(a), the location of a payer shall be considered to be in the Member State corresponding to –

- (a) the IBAN of the payer’s payment account or any other identifier which unambiguously identifies, and gives the location of, the payer, or

<sup>3</sup> OJ No. L 337, 23.12.2015, p.35.

<sup>4</sup> OJ No. L94, 30.3.12, p. 22.

<sup>5</sup> OJ No. L84, 20.3.2014, p. 1.

- (b) in the absence of an identifier referred to in paragraph (a), 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.
- (3) For the purposes of subsection (1)(b), the location of a payee shall be considered to be in the Member State corresponding to –
- (a) the IBAN of the payee's payment account or any other identifier which unambiguously identifies, and gives the location of, the payee, or
  - (b) in the absence of an identifier referred to in paragraph (a), 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.

### **Requirement to keep records**

**85C.** (1) Subject to subsections (2), (3) and (5), payment service providers shall keep detailed records, in accordance with section 85D, of the payees and payments relating to the payment services they provide for each calendar quarter.

(2) Subsection (1) shall apply only to payment services that are provided in respect of cross-border payments.

(3) Subsection (1) shall apply to a payment service provider where, in the course of a calendar quarter, that payment service provider provides payment services corresponding to more than 25 cross-border payments in respect of the same payee.

- (4) (a) For the purpose of subsection (3), the number of cross-border payments shall be calculated by reference to the payment services (including any payment services referred to in subsection (5)(a)) provided by the payment service provider per Member State and, subject to paragraph (b), per identifier referred to in subsection (3) of section 85B.
  - (b) Where a payment service provider has information that a payee has more than one identifier, as referred to in subsection (3) of section 85B, the number of cross-border payments shall be calculated per payee.
- (5) (a) Subsection (1) shall not apply to payment services provided by a payment service provider of a payer in respect of a payment where at least one of the payment service providers of the payee is located in a Member State.
- (b) For the purpose of paragraph (a), the location of a payment service provider of the payee shall be determined by reference to the payment service provider's BIC or any other business identifier code that unambiguously

identifies the payment service provider and the location of the payment provider.

### **Record keeping requirements**

**85D.** (1) The records referred to in section 85C(1) 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 services provider;
- (c) any VAT identification number or other national tax number of the payee, if available;
- (d) the IBAN or, if the IBAN is not available, any other identifier which unambiguously identifies, and gives the location of, the payee;
- (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) the address of the payee as it appears in the records of the payment service provider, if available;
- (g) details of any cross-border payment in accordance with subsection (2);
- (h) details of any payment refunds identified in relation to the cross-border payment in accordance with subsection (2).

(2) The information required to be kept in relation to paragraphs (g) and (h) of subsection (1) shall contain the following details:

- (a) the date and time of the payment or payment refund;
- (b) the amount and the currency of the payment or payment refund;
- (c) the Member State of origin of the payment received by or on behalf of the payee, as determined in accordance with section 85B;
- (d) the Member State of destination of any payment refund, as determined in accordance with section 85B;
- (e) the information used to determine the Member State of origin of the payment referred to in paragraph (c) or the Member State of destination of any payment refund referred to in paragraph (d);
- (f) any reference which unambiguously identifies the payment;

- (g) where applicable, information that the payment was initiated at the physical premises of the merchant.

**Retention of records by payment service providers**

**85E.** Any records retained by a payment service provider in accordance with section 85C shall be kept in electronic format for a period of 3 years from the end of the year of the date of payment.

**Reporting requirements of payment service providers**

**85F.** (1) This section shall apply to a payment service provider where the State is –

- (a) the home Member State of the payment service provider, or
- (b) a host Member State of the payment service provider, in a case in which the payment service provider provides payment services in Member States other than its home Member State.

(2) Where this section applies to a payment service provider, the records referred to in section 85D shall be made available to the Revenue Commissioners in the manner specified in section 85G (inserted by the European Union (Value-Added Tax) (No. 2) Regulations 2023 (S.I. No. 651 of 2023)).”.



GIVEN under my Official Seal,  
20 December, 2023.

MICHAEL MCGRATH,  
Minister for Finance.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

These Regulations transpose into Irish VAT law Council Directive (EU) 2020/284, which amends Council Directive 2006/112/EC on the common system of value-added tax.

With the growth in electronic commerce transactions, the collection and use of data on cross-border payments can be especially useful in the effort to combat VAT fraud across the EU. In this context, Council Directive (EU) 2020/284 introduced new record-keeping and reporting obligations for payment service providers who are established in the EU. The new obligations are part of the arrangements that relate to CESOP: a central electronic system of payment information developed by the EU Commission to collect certain details on cross-border payments as a way of supporting tax authorities in detecting VAT fraud and in investigating suspected such cases.

This set of Regulations transposes Council Directive 2020/284 into Irish law by way of inserting new provisions – Part 9A – into the Value-Added Tax Consolidation Act 2010 (No. 31 of 2010). Under the new provisions, payment service providers who offer payment services within the EU will have record-keeping and reporting obligations in respect of certain cross-border payments. The obligations arise where they provide payment services in respect of more than 25 cross-border payments to the same payee during a calendar quarter.

**Regulation 1** gives the title of the Regulations.

**Regulation 2** provides that the Regulations will come into effect on 1 January 2024.

**Regulation 3** inserts Part 9A ('Reporting obligations of certain payment service providers') into the VAT Consolidation Act 2010. The new Part comprises several sections:

Section 85A concerns the interpretation of terms used in the Part;

Section 85B provides for the meaning of 'cross-border payment';

Section 85C imposes an obligation on payment service providers to keep detailed records of payees and payments in certain situations. The obligation applies only to payment services in respect of cross-border payments;

Section 85D specifies information to be contained in the records;

Section 85E requires the records to be kept in electronic format and specifies the period of time for which they are to be retained by the payment service provider; and

Section 85F imposes a reporting obligation on payment service providers so that the records are made available to the Revenue Commissioners.

These Regulations are the first of two sets of Regulations which transpose EU legal provisions relevant to CESOP into Irish law with effect from 1 January 2024.

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