

CESOP: Payment reporting for VAT

In a new attempt to detect and prevent VAT fraud in the e-commerce market, the EU will implement a Central Electronic System of Payment information (CESOP). Payment service providers will need to provide details on cross-border payments to CESOP, which should allow tax authorities to detect potential VAT fraud. The rules are aimed at screening both EU and non-EU sellers. The contemplated effective date of the system is January 1, 2024.

Central Electronic System of Payment information (CESOP)

The Central Electronic System of Payment information is a database in which payment-related information will be stored. According to the Council of the European Union, fraudulent businesses exploit e-commerce opportunities in order to gain unfair market advantages by evading their VAT obligations. Where the principle of taxation at destination applies, because consumers have no accounting obligations, the EU Member States of consumption need appropriate tools to detect and control those fraudulent businesses.

In order to provide payment services, a payment service provider holds specific information to identify the recipient, or payee (i.e. the person to whom the payment is made), of that payment together with details on the amount and date of the payment and the Member State of origin of the payment. This is particularly the case in the context of a cross-border payment where the payer is located in one EU Member State and the payee is located in another EU Member State or in a third country or third territory. The EU believes that this information is necessary for tax authorities to carry out their basic tasks of detecting fraudulent businesses and controlling VAT liabilities.

The contemplated effective date of the new requirements for payment service providers is January 1, 2024. Whilst the requirements for payment service providers are incorporated into the EU

VAT Directive, a reference is made to the Payment Services Directive 2015/2366 (PSD2). As such, these new rules require comprehensive knowledge of both the VAT rules and the PSD2 rules.

Who will be affected by the new legislation?

Payment service providers are required to keep sufficiently detailed records of certain cross-border payments. A wide range of credit institutions, electronic money institutions, post office giro institutions, payment institutions and even natural persons and legal persons falling under an exemption under PSD2 are defined as payment service providers for CESOP purposes. Furthermore, the guidelines set out by the European Commission make it clear that substance-over-form principles apply. For a company to qualify as a payment institution in substance, it would need to comply with the CESOP rules. This is made particularly clear in the examples set out in the guidance for marketplaces that collect and keep funds in their own name before distributing them to the payee and therefore qualify as payment service providers for CESOP purposes. Once a business qualifies as a payment service provider as per the above, it will fall under the scope of the proposed rules for all relevant non-domestic payment services it provides.

What payments are in scope of CESOP?

The definition of 'payment' appears to be quite broad and includes any act, initiated by the payer or on their behalf or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee. There are, however, some specific exclusions, which require a more detailed review. A payment qualifies as a 'cross-border payment' if the payer is located in one EU Member State and the payee is located in another Member State, in a third territory or in a third country. By proxy, this location is determined by looking at the location where the bank account number is registered.

What new requirements will payment service providers be subjected to?

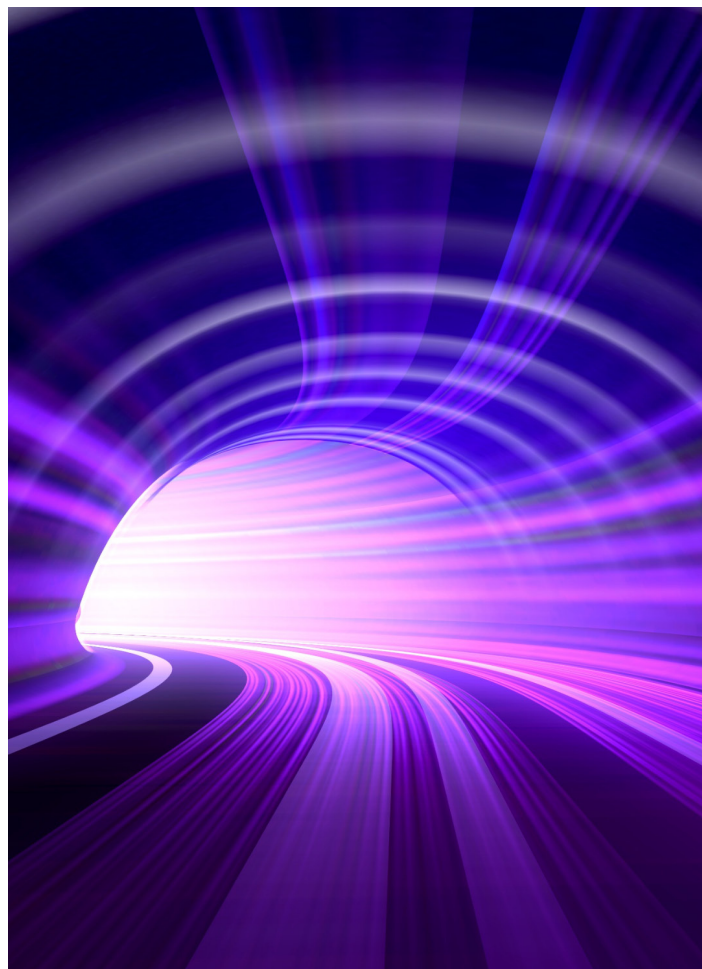
EU-based payment service providers will be required to transmit to the tax authorities in their EU Member State of residence ('home Member State') or the EU Member State in which a payment service provider has an agent or a branch or provides payment services ('host Member State') such information which is necessary for tax authorities to detect possible fraudsters and to carry out tax controls. In order for the record-keeping obligation to be proportionate, when both the payer's and the payee's payment service providers are located in an EU Member State, only the payee's payment service provider should keep records of that information. For the purposes of the record-keeping obligation, a payment service provider should be considered to be located in an EU Member State when their BIC or unique business identifier refers to that EU Member State.

Conversely, if the payee's payment service provider is not located in an EU Member State, the payer's payment service provider should keep records of the information on the cross-border payment. The payment service provider should retain the relevant information for a period of three years. Such information would need to be retained if the payment service provider makes more than 25 cross-border payments to the same payee in one calendar quarter.

How is the relevant data gathered by EU Member States?

The EU has prescribed a data format that should be used when gathering the relevant payment data. Some of the data is optional and other data is mandatory. Whilst payment service providers are only expected to perform limited data verification tasks, they do need to ensure that they provide all relevant data they have on file. Also, they may need to perform syntactic checks of some of the data fields. The EU Commission has also released a user guide that prescribes the responses that a payment service provider might receive from CESOP when transmitting such data.

EU Member States are required to implement a mechanism through which payment service providers can transmit data to them. In most countries, this process has not yet fully crystallized. In the

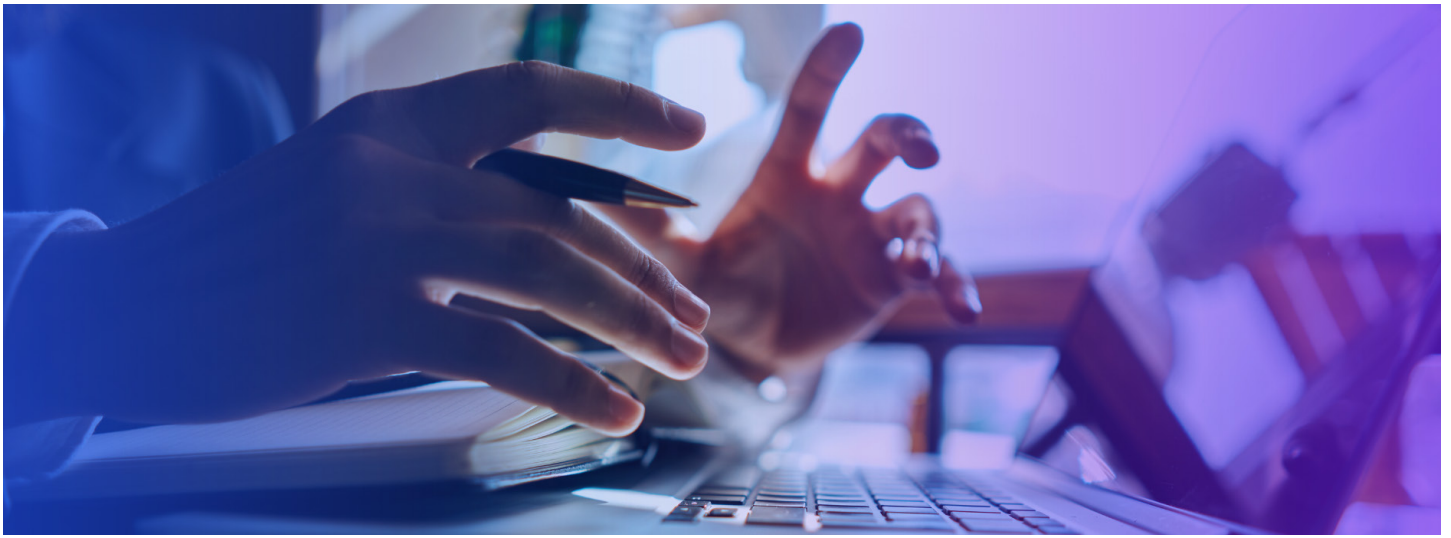


Netherlands, the reporting is expected to take place through a system called Digipoort. Once the relevant data has been gathered, the competent authority of each EU Member State is required to transmit the information to CESOP. CESOP will retain the information for up to five years from the end of the year in which the information was entered into the system.

What if multiple payment service providers are involved in one single payment?

All payment service providers involved in a given payment have a record-keeping and reporting obligation, unless a specific exclusion is applicable. These records and reports should contain information on the payment from the initial payer to the final payee rather than on the intermediate transfers of funds between the payment service providers.

If multiple payment service providers are involved in a payment, the reporting requirement would in principle only rest with the payee's payment service provider. If multiple payment service providers act on behalf of the payee, multiple service providers would in principle need to report the relevant data. The reporting requirement will shift to the payer's payment service provider if none of the payee's payment service providers is established in the EU.



When will the data need to be transmitted?

Starting from January 2024, the data should be reported at least every quarter. The data must be transmitted by the end of the month following the quarter at the latest, as follows:

- 1st period (January-March): 30 April
- 2nd period (April-June): 31 July
- 3rd period (July-September): 31 October
- 4th period (October-December): 31 January

As this is described as a maximum term, there does appear to be room for Member States to impose an earlier deadline in their national legislation.

What is my next step?

The rules regarding CESOP should be harmonized. As such, companies can start preparing for these new rules based on the EU legislative package. As a first step, this should allow companies to determine:

- Whether they qualify as a payment service provider for the purposes of CESOP.
- Whether relevant payments are made that would need to be reported.
- Under which circumstances relevant payments would need to be reported.
- Where the reporting should take place.
- Whether the mandatory data is captured and all data is appropriately verified.

Companies should also be able to get started on the technical requirements. As the optional and mandatory data is set out in the legislative framework and we know that the data is required to be submitted in XML format, companies can prepare themselves. In our experience, it can take quite some time to prepare, which is why payment service providers that wait for local implementation of the rules may run out of time. That said, the final steps, such as preparing the IT infrastructure for reporting via the appropriate channels, would need to be undertaken when the local rules have been implemented.

Would you like to receive more information about CESOP? Do you need assistance implementing the new regulations? Meijburg & Co would be happy to discuss these with you. Feel free to contact one of our specialists.



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