

CESOP: New reporting obligations for Payment Service Providers (“PSPs”) as of 1 January 2024

Impact on Middle East Businesses





In brief

Payment Service Providers (“**PSPs**”) in the EU will be required, as of 1 January 2024, to keep electronic records of payment data for cross-border payments and to exchange these records with a newly established central EU-database. The purpose of this new reporting obligation is to combat VAT fraud.

In detail

Introduction

The proposed rules will take effect from 1 January 2024, and create additional administrative requirements for European PSPs. In case of 25 or more cross-border payments per payee, an obligation arises for the PSP to keep records of payment data in electronic registers and to share these registers with local tax authorities.

The local tax authorities in turn exchange these registers with the newly established Central Electronic System of Payment information (“**CESOP**”). The data in this central EU database is accessible to an authorised group of users, the so-called Eurofisc liaison officers.

Background

Within the broader framework of the digital economy, and the difficulties (Member) States experience in the taxation of e-commerce transactions, an increasing number of instruments are being created for Member States to monitor VAT obligations. The record keeping obligation as provided for in the Council Directive (EU) 2020/284 (“**PSP Directive**”) is yet another new tool and is created to combat VAT fraud. The aim is to provide tax authorities with a better understanding of cross-border payments and the accurate identification of economic activity.

Record keeping

In principle the PSPs of both the payer and the payee have a record keeping and reporting obligation. An exemption exists for the payer's PSP if one of the payee's PSPs is located in a Member State. The reporting obligation then only rests on the PSP of the payee.



Payment service providers

The new rules are aimed at all PSPs active within the EU. The definition of, among others, payment service providers is aligned with the definition as set out in the Directive (EU) 2015/2366 (“**PSD2 Directive**”). In principle, this includes credit institutions, payment institutions, electronic money institutions, and post office giro institutions. In addition, small PSPs with a turnover of less than EUR 3 million and, in specific cases, commercial agents and electronic communication networks or services also fall within the scope of the new rules.

Cross border payments

The record keeping obligation is limited to cross-border payments. Domestic payments in principle remain outside the scope of the new rules. No distinction is made between payments by consumers or businesses. A payment is cross-border if the payer is located in a Member State and the payee is located in another Member State, third country or third territory.

Reporting obligations

The records are made available to the local tax authorities in the Member State of establishment or in the host Member State, this includes the Member States where the PSP offers payment services. This requirement goes beyond having branches or a fixed establishment in another Member State. The registers must be provided on a voluntary basis.

The final digital format of the registers and the method of delivery still need to be further elaborated by the legislator. Since the rules are based on an EU Directive, which must be implemented by each Member State, and the Directive does not provide for a format or method of delivery, this will in principle lead to each Member State providing its own interpretation.

Impact on Middle East businesses

Middle East PSPs with EU presence (or those that offer payment services in the UAE), that offer in scope cross border payment services via an EU or EAA based entity will come into scope of the new rules. It is therefore imperative for Middle East businesses to be prepared ahead of the fast approaching CESOP reporting deadline.

The first impression is that the project will be mainly IT driven, with the extraction and collection of payment data in the systems of the PSP. The tax assessment is enclosed in the question whether, and to what extent, the PSP has a record keeping and reporting obligation. At this time, it is important for PSPs to take inventory of whether they have access to the reportable payment data in their records. Furthermore, PSPs might want to determine an approach on how to collect this data in a centralised manner to simplify the exchange with tax authorities.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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Thank you

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