

VAT NEWS



CESOP: TIME TO GET READY!

I. Introduction

With our previous [VAT newsletter](#), we provided an insight into the main aspects of the VAT information obligations of Payment service providers (PSPs) that have been introduced by the EU Council Directive (EU) 2020/284 (“EU Payment Services Directive”) and will be applicable as from 1st January 2024.

Luxembourg recently transposed these new rules into domestic law (Law of 26 July 2023). As the first reporting should take place by 30 April 2024, PSPs that are established in Luxembourg or provide payment services that are in the scope of the reporting in Luxembourg should assess their reporting obligations and ensure that the proper compliance processes/tools are in place.

Considering that the implementation of these new rules has raised a number of practical challenges for PSPs and the national tax authorities across the EU, the EU Commission recently published on its official [website](#) a set of Frequently Asked Questions (“FAQs”). Although this document undoubtedly provides useful guidance on the interpretation of CESOP rules, it cannot address all possible cases and a specific assessment is still required. To help you navigate through this matter, you will find below an overview of some of the key takeaways (non-exhaustive) of the FAQs as well as a presentation of the services that BDO can offer in this respect.

II. Territorial scope of the reporting obligations: Are PSPs in third territories or third countries covered?

The EU Commission reiterates that PSPs that exclusively provide payment services in third countries or third territories that are not subject to the VAT Directive are not in the scope of the CESOP related obligations.

However, PSPs located in the European Economic Area (EEA), such as Iceland, Liechtenstein and Norway, might be subject to the reporting obligation when they provide payment services in the EU MS. For instance, an EEA PSP acting as payer’s PSP in Luxembourg, will report in Luxembourg the payments from that payer to any third country (including EEA countries). An EEA PSP acting as payee’s PSP in Luxembourg will report in Luxembourg the payments received from other MS.

III. Which payments are in scope of the new rules?

Given that the scope of the new rules is quite broad and covers most of the payment market, i.e., credit institutions, e-money institutions, post-office giro institutions and payment institutions, a case-by-case assessment of the exact nature of the payment services supplied is required in order to determine whether a reporting obligation is triggered.

The FAQs provide more clarity with respect to certain types of payments.

VAT NEWS

CESOP: TIME TO GET READY!

IV. How should PSPs identify cross-border payments? The Payer's and payee's location

As a reminder, only data on cross-border payments should be transmitted to MS and to CESOP. For the purposes of these new rules, a payment shall be considered as cross-border when the payer is located in a MS and the payee is located in another MS in a third territory or in a third country.

Therefore, PSPs are obliged to determine the location of the payer and the payee. In this respect, according to the EU Commission, for bank transfers IBAN is often the best indicator for the location of the payer/payee. For other type of transactions however, if the PSP has different identifiers available that provide a different location, it must choose the identifier that, in its specific situation, best reflects the location of the payee. This also means that the PSP might use different location identifiers depending on the payment products it offers.

V. Aggregation of transactions for the calculation of the threshold of 25 cross-border payments

Under the CESOP provisions, payment information only has to be recorded and provided if an EU or non-EU payee receives more than 25 payments per quarter.

In practice, the calculation of this threshold raises a number of technical challenges for PSPs, given that they are required to perform some aggregation across payment methods and identify whether two payment accounts are actually linked to the same payee.

The FAQs seek to give more guidance on the data elements that should serve as indicators for such assessment with an indicative list of practical cases.

VI. Data reporting and recordkeeping issues

Should the head office or the branch(es) report the data?

The FAQs provide useful clarifications about the reporting entity in situations where PSPs on the basis of their payment license provide their services in multiple EU jurisdictions via a branch or a commercial agent.

Thus, it is specified that:

- ▶ in principle, it is expected that the head office will report to the home MS and a branch or an agent will provide information to the host MS;
- ▶ however, as the applicable provisions do not specify whether the head office or the branch must transmit the information to the home or host MS, it is up to the PSPs to decide if the head office will submit the records also on behalf of the branch. Should this be the case, the head office should clearly indicate its identifier and the identifier of the branch on which behalf is submitting the report.

VAT NEWS

CESOP: TIME TO GET READY!

Since, PSPs will transmit the records to the national authorities and not directly to the CESOP, it is recommended that they seek advice from them for practical details on this matter.

Will there be a One-Stop-Shop scheme?

The EU Commission confirmed that there will not be a One-Stop-Shop solution for streamlined reporting. Data are reported to the home and host MS depending on where the headquarter, branch or agent is located and where payment services are provided.

Filing deadlines?

Based on the Luxembourg provisions, the data shall be submitted no later than the end of the month following the relevant quarter.

However, as also mentioned by the EU Commission, in the EU rules there is no specific reference to monthly count. Therefore, it cannot be excluded that some other MS set a shorter deadline for the submission of the data (e.g. the 20th day).

Is there any obligation for a nil reporting?

If there are no transactions to be reported, then, at EU level, a nil reporting cannot be mandatory. However, as a different approach could be followed by the EU MS, PSPs are advised to consult their national authorities to confirm whether there would be any domestic requirements.

The 3 years retention period

The EU Commission clarified that the 3 years retention period only applies to the information that is transmitted to CESOP.

Therefore, there is no recordkeeping obligation for payments that are not in the scope of the reporting (e.g. payments from payers located outside the EU) or those payments which are used for the monitoring of the threshold of 25 cross-border payments without being reported (i.e. no obligation for the payer's PSP to record intra-EU payment transactions, given that they shall be reported by the payee's PSP).

However, the FAQs confirm that this point is also up to the MS and thus PSPs should consult their national authorities.

In light of the above guidelines, it clearly results that some of the practical aspects of the data reporting and recordkeeping might vary in the different EU jurisdictions. Therefore, it is of utmost importance that PSPs monitor the situation in order to ensure their compliance.

VAT NEWS

CESOP: TIME TO GET READY!

VII. How BDO could help you?

BDO with its international network can guarantee to PSPs a sharp and full-scale assistance at EU level with their CESOP obligations.

In particular, our experts will be pleased to guide you throughout the different stages to ensure compliance with these new rules. Our scope of assistance includes:



Preliminary assessment of CESOP reporting obligations

Based on your current business model, BDO will assess the nature of the services supplied and whether they are in the scope of the new recordkeeping and reporting obligations in Luxembourg.

It will also be determined whether any actions should be taken in other EU MS.



Practical advice on the implementation of CESOP reporting

Under this phase, BDO will provide you with a practical advice on, among others, the reportable transactions, the identification of the location of the payer and the payee, the calculation of the threshold of 25 cross-border payments, the data to be collected and reported. It can also include specific assistance with respect to retrieving the necessary data from your system to produce the reporting file. This would be handled in cooperation with our Advisory department, benefiting from the expertise of consultants with a banking background.



Registration with National Tax Authority (NTA)

PSPs which bear reporting obligations in Luxembourg shall register on a dedicated Luxembourg portal. Similar requirements will have to be addressed in other EU jurisdictions. BDO can help you with these registrations.



Compliance reporting tool

BDO can direct you to a high-end and well-equipped Luxembourg service provider offering a reporting solution. This tool will ensure the input and output data validity & consistency at various steps and convert the transaction data into the standardized XML format to be submitted to NTAs.



Filing of the quarterly reports with NTAs

BDO can ensure the filing of the quarterly reports with the authorities in Luxembourg and other EU jurisdictions.

VAT NEWS

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