

MANDATORY SPLIT PAYMENT METHOD FOR VAT PAYMENTS

Terms of split payment

The split payment mechanism has operated as a voluntary method of payment in Poland since July 2018. It was introduced by the Act Amending the Act on the Tax on Goods and Services and Certain Other Acts of 15 December 2017 (Journal of Laws of 2018, item 62, as amended). The split payment mechanism is the voluntary splitting of the buyer's liability in a transaction for the sale of goods and services subject to VAT into two payments. The first is payment of the amount of VAT arising under the invoice to a special VAT account established by the supplier, while the second is the net sales price, which is paid to the supplier's usual bank account or settled in some other way.

Under the split payment regulation, a bank is required to maintain a current VAT account for each settlement account in PLN. A VAT account is always in PLN and only funds in respect of payments of VAT, funds from another VAT account or a refund of VAT by the tax authorities may be paid into the account. The account may not be seized in court or administrative enforcement proceedings unless the proceedings are for the purpose of recovering VAT payments. A VAT account may be debited, inter alia for the purpose of transferring a sum corresponding to the amount of VAT to the supplier's VAT account by an account holder that received payment using split payment transfer instructions and that is not the supplier of the goods or the provider of the services shown on the invoice for which the payment is being made. At the same time, a VAT account may be debited for the purpose of a refund of a payment incorrectly received in the VAT account of an account holder.

Changes

On 9th August 2019 the Parliament amended the Act on the Tax on Goods and Services signed by President on 29th August 2019 and published on 13th September 2019 (the "Amendment"), which, inter alia, introduce a mandatory split payment mechanism in the circumstances specified in the draft. Based on the Amendment, the voluntary split payment system will not disappear, but it will become mandatory in certain sectors. The basis for the Amendment is

Key issues

- Terms of split payment
- Changes
- Sanction
- Additional amendments

Council Implementing Decision (EU) 2019/310 of 18 February 2019 authorising Poland to introduce a special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax (OJ EU L 51/19).

The mandatory split payment method will apply to invoices documenting transactions whose one-off value is PLN 15,000 or more. This concerns transactions relating to certain specified goods and services which are listed in the Amendment. These include, among other things, construction work, the sale of parts and accessories for motor vehicles and the sale of various metals.

Under the Amendment, tax payers, who are subject to mandatory split payment method, are obliged to have a settlement account as referred to in the Banking Law (or a named account in a Cooperative and Loan Society), as well as a VAT account attributed to it, denominated in Polish zloty. Tax payers without a registered office for economic activity or permanent place of business in the Republic of Poland will be entitled to a refund of bank charges for maintaining such account for mandatory split payment purposes.

Sanctions

The Amendment introduces an additional formal requirement to mark the invoice "split payment mechanism". This applies to invoices that, owing to the subject of the transaction and the amount thereof, should be paid using the split payment mechanism. The issuer of an invoice that fails to mark an invoice in this way will be fined 100% of the amount of tax shown on the invoice.

Another sanction will be to fine a buyer that, despite the obligation to settle the amount of VAT shown on the invoice based on the split payment mechanism, settles the amount in some other way. The sanction will be 100% of the amount of tax shown on the invoice.

Furthermore, under amendments to the Fiscal Offence Code, if a taxpayer fails to comply with the requirement to use the split payment mechanism, it may be subject to a fine that applies to fiscal offences. These can be up to PLN 21,600,000 (approx. EUR 5,000,000). In less severe cases, the provisions on lower fines for fiscal misdemeanours will apply accordingly.

Additional amendments

Taxpayers will not be able to book as a revenue-earning costs the part of any cost that should be settled using the split payment mechanism, i.e. when the invoice includes the statement "split payment mechanism", but it is settled in some other way.

The Amendment introduces the possibility of so-called collective payments in the split payment system. The payer will be able to pay by means of a single transfer instruction all invoices received from one supplier in the relevant month. The transfer instruction will state the period covered by the invoice instead of the numbers of specific invoices.

Under the Amendment, there are also provisions enabling the transfer of funds from a VAT account for payment of corporate income tax, personal income tax, excise tax, customs duties, social security contributions and advances towards such taxes, prepayments and daily payments for excise tax and default interest on these public charges.

The new regulations are to come into force on 1st November 2019.

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