

Obligatory split payment in Poland

General information on the Polish VAT split payment mechanism

As at: 1st November 2019

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On 1st November 2019, an obligatory split payment mechanism was introduced for certain sectors in Poland. Below, you can find the key information regarding the split payment procedure.

Which sectors are affected?

The obligatory split payment mechanism applies to supplies of the following groups of goods and services:

- Steel products, precious metals, non-ferrous metals,
- Waste, scrap, secondary raw materials,
- Fuels, heating oil and lubricating oil,
- Coal, coke, briquettes,
- Computers, phones, TV sets, game consoles, cameras,
- Electronics including parts and accessories,
- Parts and accessories for cars and motorcycles,
- Construction works irrespective of a seller's status.

Please find attached a detailed list of all the goods and services for which the split payment mechanism is obligatory (the so-called 'Annex 15'). Please read the list and check whether and to what extent Annex 15 applies to you.

A business bank account at a Polish bank is a must!

All taxable persons doing business in the sectors covered by the obligatory split payment mechanism must have a business bank account in Poland to be able to make and receive payments under the split payment procedure. Foreign enterprises which have neither its registered office nor a fixed establishment in Poland can apply to the tax office for a refund of the related bank fees. A split payment can be credited only to a Polish business bank account. Thus, it is not possible to make a split payment into a foreign business bank account.

We recommend that our clients who do not have a Polish business bank account yet should open one at a Polish bank of their choice and make sure that the bank automatically opens also a separate VAT account for the purposes of the split payment mechanism. The latter applies also to those clients who already have a Polish business bank account.

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Which transactions are affected?

The obligatory split payment mechanism applies only to Polish domestic transactions carried out by all enterprises, including foreign ones, which do business in the sectors referred to above.

The split payment mechanism applies to B2B transactions (carried out between taxable enterprises) and is obligatory if the gross value shown on an invoice exceeds PLN 15,000 (or its equivalent in a foreign currency) and the invoice covers the supply of any goods or services listed in Annex 15. If the gross value of an invoice is lower, the general rules are applicable (the split payment mechanism can still be applied voluntarily by a buyer as long as a seller has a Polish business bank account along with a separate VAT account).

Part 1

When and how to invoice under the split payment procedure?

Invoicing under the split payment procedure

As of 1st November 2019, Polish invoices for any goods or services referred to above must indicate the Polish VAT at the applicable rate. Also, they must refer to the split payment procedure (the Polish reference to be provided on the invoice reading 'mechanizm podzielonej płatności') if the gross value of an invoice exceeds PLN 15,000 (or its equivalent in a foreign currency).

The gross value of PLN 15,000 means the gross value of all the receivables covered by an invoice irrespective of the number of payments which are actually made. For example, if an invoice covers both the goods or services listed in Annex 15 and those not listed therein and its gross value exceeds PLN 15,000 (or its equivalent in a foreign currency), a seller must provide the reference 'mechanizm podzielonej płatności' on their invoice even if the share of the goods or services listed in Annex 15 itself does not exceed PLN 15,000 (or its equivalent in a foreign currency).

We do not recommend splitting one invoice into a number of smaller invoices in order to avoid the split payment procedure if this is motivated by tax rather than business reasons. The tax authorities will see such splitting as 'artificial' in the case of a single supply of goods or services whose value exceeds PLN 15,000 (or its equivalent in a foreign currency), in particular.

Receiving a payment under the split payment procedure – a business bank account in Poland is a must!

A Polish bank maintains two accounts:

- a general business bank account in PLN, and
- a separate VAT account in PLN which, as a general rule, should be opened automatically along with a general business bank account while no separate agreement has to be made with the bank.

A buyer receives only one invoice providing the number of a seller's general business bank account which should be used for paying also the VAT amount!

Once a seller's bank receives the transfer under the split payment procedure, it will automatically credit it in the following way:

- the net value in PLN will be credited to the general business bank account in PLN*,
- the VAT value in PLN will be credited to the separate VAT account.

* Alternatively, the net value can also be paid in a different currency into another business bank account (also one held at a non-Polish bank), please see point 2 in part 2 below for details.

Part 2

When and how to pay an invoice issued under the split payment procedure?

Paying an invoice under the split payment procedure – a business bank account in Poland is a must!

Under the split payment procedure, a buyer must transfer the VAT amount in Polish zloty (PLN). The net amounts can be transferred in other currencies too. Please note that a special split payment form must be used to make a bank transfer under the split payment procedure.

If there is no money in a buyer's VAT account or if their VAT account balance is not enough to cover the VAT amount due, the remaining VAT amount will be automatically transferred from their general business bank account.

1. A payment in Polish Zloty (PLN) – one bank transfer will be enough!

A buyer makes only one bank transfer under the split payment procedure from their Polish business bank account in PLN into a seller's Polish general business bank account in PLN (not their separate VAT account). Next, the bank will credit the transfer to a seller's accounts as two payments:

- the VAT amount in PLN will be credited to a seller's VAT account,
- the net amount will be credited to a seller's general bank account.

When making a bank transfer, the following data must be provided:

- the number of a seller's general business bank account in PLN, for which the bank maintains also a separate VAT account (please note that you should enter the number of a seller's general business bank account and not that of their separate VAT account),
- the gross amount in PLN,
- the VAT amount in PLN,
- the invoice number,
- a seller's Polish VAT number,
- in some cases, also a buyer's Polish VAT number.

2. Paying the net amount in a currency other than PLN and the VAT amount in PLN – two bank transfers will be needed!

Alternatively, the net amount can be paid in a currency other than PLN into another business bank account. In this case, two separate bank transfers (one with the VAT amount and one with the net amount) need to be made in the following way:

- a bank transfer of the VAT amount in PLN under the split payment procedure (for this purpose, the VAT amount must be converted into PLN as per the applicable provisions of the Polish VAT Law) into a Polish business bank account in PLN, for which the bank maintains also a

separate VAT account; while making this bank transfer, you need to provide, inter alia, the following data:

- the number of a seller's general business bank account in PLN, for which the bank maintains also a separate VAT account (please note that you should enter the number of a seller's general business bank account and not that of their separate VAT account),
 - the gross amount in PLN which is identical to the VAT amount in this case,
 - the VAT amount in PLN,
 - the invoice number,
 - a seller's Polish VAT number,
 - in some cases, also a buyer's Polish VAT number.
- a bank transfer of the net amount in a foreign currency (EUR, for example) into a non-Polish business bank account or a Polish business bank account maintained in a foreign currency.

It is not possible to pay pro forma invoices under the split payment procedure with the exception of pro forma invoices for advance payments - see below.

Advance payments

In the case of advance payments, the net amount and the VAT amount must be transferred **on the same day**. If the net amount is transferred earlier than the VAT amount, the net amount will be treated as the gross amount for VAT purposes and a buyer will face the risk of negative consequences resulting from the failure to apply the split payment procedure.

When transferring an advance payment under the split payment procedure the word "*zaliczka*" (Polish advance payment) must be specified as the transfer title in the transfer order if the advance payment invoice is issued after the payment. This also applies to a bank transfer of an advance payment based on a pro forma invoice.

General information

We recommend that our clients should make a separate payment of every invoice under the split payment procedure. A collective payment (of more than one invoice issued under the split payment procedure) is only possible if it covers all invoices issued by a seller within a period amounting to at least one day and not exceeding one month and amounts to the sum of their value. In the case of collective payments, the period for which a collective payment is being made under the split payment procedure should be indicated instead of the invoice number.

Given the joint and several liability (see 'Joint and several liability' below for details), we recommend always paying all invoices which include a good listed in Annex 15 under the split payment procedure (also if they do not exceed PLN 15,000 or its equivalent in a foreign currency).

If the gross value of an invoice exceeds PLN 15,000 (or its equivalent in a foreign currency) but the share related to the goods or services listed in Annex 15 does not exceed PLN 15,000 (or its equivalent in a foreign currency), a buyer must pay at least the VAT amount corresponding to the goods or services listed in Annex 15 under the split payment procedure. Some experts believe that the obligation to make a split payment in this case is not covered by the EU decision authorising Poland to introduce the split payment mechanism (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). However, given the ambiguous wording of the legal provisions, we recommend paying the full gross value of an invoice issued under the split payment procedure under this procedure to avoid sanctions and joint and several liability.

If one single supply of goods or services is split into more than one invoice so that none of them exceeds PLN 15,000 (or its equivalent in a foreign currency) in order to bypass the split payment mechanism and the tax authorities consider this to be 'artificial', negative consequences may follow for both the buyer and the seller (see part 3 below for details).

Set-off

When an invoice is paid under the set-off procedure within the meaning of Article 498 of the Polish Civil Code, the obligatory split payment mechanism does not apply to the amounts being set off. Article 498 of the Polish Civil Code reads as follows: *If two persons are simultaneously debtors and creditors with regard to each other, each of them may set off their receivable against the receivable of the other party, if the object of both receivables is money or things of the same quality specified as to their kind and both receivables are mature and may be pursued before a court of law or before another state organ. Owing to a set-off both receivables shall cancel each other to the amount of the lower receivable.* To be on the safe side, a set-off should be stipulated in an agreement and consulted with an attorney to make sure that the conditions set forth in Article 498 of the Polish Civil Code are met.

Part 3

Consequences of failing to apply the split payment procedure

Sanctions

It is obligatory to apply the split payment procedure; failing to do so will result in the following consequences for both sellers and buyers:

- A seller is obliged to provide a reference to the split payment procedure ('mechanizm podzielonej płatności') on their invoice. Failing to do so will result in a penalty amounting to 30% of the VAT amount. However, this sanction can be avoided if the buyer pays at least the VAT amount from the goods / services that are subject to the obligatory split payment mechanism under the split payment procedure despite the lack of a corresponding note on the invoice. Therefore, it may be necessary to inform the buyer before payment that he should pay this invoice using the split payment procedure. In addition, the seller should also issue a correction invoice with a reference to the split payment procedure.
- A buyer is obliged to pay the invoice under the split payment procedure. Failing to do so will also result in a penalty amounting to 30% of the VAT amount. However, no such fine shall be imposed if the seller has settled the VAT amount resulting from this invoice in his VAT return.

The penalties referred to above do not apply to VAT taxable persons who are natural persons and already bear personal liability for failing to comply with the split payment regulations based on criminal tax law.

In addition, up to 720 day-fines (amounting up to PLN 21.6 million in 2019) can be imposed on a buyer's representative if they intentionally violate the split payment regulations.

If an invoice is intentionally issued without a reference to the split payment procedure ('mechanizm podzielonej płatności'), up to 180 day-fines (amounting up to PLN 5.4 million in 2019) can be imposed on the responsible person.

Joint and several liability

An enterprise buying any goods listed in Annex 15 bears joint and several liability for a seller's tax arrears resulting from those supplies. The joint and several liability applies also in the case of supplies of any goods listed in Annex 15 whose value does not exceed PLN 15,000. A buyer can avoid their joint and several liability if they pay for the goods listed in Annex 15 under the split payment procedure (also voluntarily).

Given the above, we recommend paying invoices which include a good listed in Annex 15 under the split payment procedure irrespective of their value.

Part 4 Other information

Making a bank transfer from a VAT account into a general business bank account

It is not possible to dispose freely of the money kept in a separate VAT account. As a general rule, it can be used only to make payments into other taxable persons' VAT accounts or pay taxes to the tax office or social insurance contributions to the Polish Social Insurance Institution.

A taxable person can request that the money kept in their separate VAT account be transferred into their general business bank account. The tax authority will examine whether the taxable person is entitled to such a transfer within 60 days, which entails audit activities. Next, the tax authority will issue a decision stating the amount which can be transferred from the VAT account into the general business bank account. The transfer can be denied if there are tax arrears, for example.

Exemption from additional penalties and joint and several liability

Taxable persons who use the split payment procedure are given certain advantages. If a payment is made under the split payment procedure:

- a taxable person will be exempt from their joint and several liability for their supplier's tax arrears up to the VAT amount paid under the split payment procedure;
- the sanction amounting to 20%, 30% or 100% of the evaded VAT will not be imposed in certain cases as long as a taxable person has submitted their VAT return and paid the outstanding VAT;
- the increased penalty interest amounting to 150% of the general penalty interest will not be imposed if the late payment is related to output VAT resulting from a VAT return in which 95% of input VAT was paid under the split payment procedure; however, this exemption applies only to tax arrears which do not exceed twice this input VAT.

Annex: English version of Annex 15 to the Polish VAT law (Annex 15 ENG_v2.docx)

In this brochure we presented our interpretation of provisions and tax practice for information purposes. This brochure does not constitute a tax advisory.