



TAX ALERT: Foreign Bank Accounts and the So-Called "White List of VAT Payers"

Situation as at: July 1st, 2020

Starting from January 1st 2020 before making a payment to a seller registered as a VAT-taxpayer in Poland, a buyer being a VAT taxpayer is required to verify whether the seller's bank account is indicated in the central register of VAT taxable persons (i.e. in the so-called Whitelist of VAT taxable persons; further: Whitelist). If a seller's bank account is not indicated in the Whitelist, the buyer bears a risk of sanctions.

The Whitelist is a free of charge register kept by the Head of the National Tax Administration in which the status of a VAT taxpayer can be checked. The information contained in the Whitelist (e.g. removal from the VAT register and VAT registration restoration including legal grounds) can be searched by criteria such as the business name (surname) of a given entity, or a NIP or REGON number or a bank account number. As a result, honest VAT taxpayers have a tool to verify the credibility of their contractors to ensure due diligence and thus limit the risk of joint and several liability for a supplier's tax arrears. Moreover, the Whitelist aims at minimizing the risk of unintentional involvement in a VAT carousel. As indicated by the tax authorities, to ensure due diligence, VAT taxpayers may, among other things, check their contractor's VAT status. The Whitelist is updated on every working day. If the data contained in the Whitelist are not accurate, a VAT taxpayer may request to delete or rectify them.

The Whitelist is accessible on the following website: <https://www.podatki.gov.pl/wykaz-podatnikow-vat-wyszukiwarka>. Any person verifying the bank account number into which he intends to make a payment will receive confirmation stating the date and hour of verifying the account in the Whitelist.

As of today the situation is such that bank accounts other than those held in Polish banks are not published on the Whitelist.

Ultimately, only Polish bank accounts are made public on the Whitelist, which at the same time - before being included in the list - will have to be confirmed by the so called System of Information and Communication Clearing House (System Teleinformatycznej Izby Rozliczeniowej - STIR).

All bank accounts (Polish and non-Polish) from and to which payments for transactions subject to Polish VAT are made should be disclosed to the relevant tax office. Thus, please provide us with information on your bank accounts (including foreign bank accounts connected with Polish

business activities and Polish bank accounts used for business activities). Please send us the following information as soon as possible:

- bank account number;
- bank account holder's name;
- name of the bank.

If the transaction value exceeds PLN 15,000¹, payment for this transaction to the seller's bank account, registered for VAT in Poland, other than the bank account indicated in the Whitelist (e.g. to a foreign bank account), will entail the following tax sanctions:

- a buyer making the payment (or a VAT-taxpayer who transfers the payment from the buyer being a VAT taxpayer to a seller registered as a VAT taxpayer in Poland) bears joint and several liability for the sellers' arrears² and
- a buyer making the payment is obliged to exclude the payment made to a bank account not indicated in the Whitelist from tax-deductible costs (the above applies only to Polish income tax, both Personal Income Tax or Corporate Income Tax).

The legislator has provided for the following situations in which the negative consequences of making a payment into a seller's unregistered bank account can be avoided:

- the payment is made in Split Payment (for this purpose both the buyer and the seller must hold Polish bank accounts); in practice it means that the buyer does not have to verify whether the seller's bank account is published in the Whitelist, if he makes the payment in Split Payment; please refer to our Tax Alert „Obligatory Split Payment”, or
- the buyer will submit a notification on the official form ZAW-NR to the tax office competent for him³ about making a payment into a bank account other than that indicated in the Whitelist within 7 days (within 14 days during the epidemic state in Poland) of the transfer order; starting from July 1st, 2020 it is sufficient to submit the notification ZAW-NR only once with the first payment into a bank account other than that indicated in the Whitelist. Subsequent payments to this bank account do not have to be notified on the ZAW-NR form to the tax office.

¹ The above regulation applies only to B2B transactions (between a buyer being a VAT taxpayer and a seller registered as a VAT taxpayer in Poland) related to a given supply of goods or a service whose value exceeds PLN 15,000.00. This amount refers to a single transaction value, irrespective of the number of payments made. A single transaction value is the total amount payable resulting from a contract stipulating in advance the specific subject and value of supplies of goods/services.

² The buyer making the payment is jointly and severally liable for the seller's VAT arrears, but only for that part of the VAT proportional to the supply of goods or services made to him.

³ Prior to July 1st, 2020 the buyer had to submit the ZAW-NR notification to the tax office competent for the seller within 3 days of the transfer order

The above mentioned sanctions do not apply to payments for invoices documenting intracommunity acquisition of goods, import of goods, or purchase of goods or services settled for VAT by the buyer (i.e. in reverse charge mechanism).

It should be emphasized that if a bank account not indicated in the Whitelist is provided on the invoice, there is a risk that the buyer will refuse to pay the invoice for fear of being jointly and severally liable for possible tax arrears and not being able to include purchase invoices in tax costs.

For this reason, we encourage you to open a bank account in Poland and to report this account to the relevant tax office in order to make it public on the Whitelist.

However, if you do not decide to open a bank account in Poland, please find attached a specimen of the ZAW-NR notification form in Polish and English. You may attach this notification, e.g. to any sales invoice, to enable your buyer to submit a notification of payment of the invoice to an account other than the one included in the Whitelist to the tax office competent for him within 7 days (14 days during the epidemic state) of the transfer.

The ZAW-NR notification form can be submitted electronically.

Attachments:

- 1.a specimen of the ZAW-NR notification form in Polish as an excel file, version 2 which can be submitted to the tax office
- 2.a specimen of the ZAW-NR notification form in Polish as a PDF file, version 2 which can be submitted to the tax office
- 3.a specimen of the ZAW-NR notification form in English as an excel file, version 2 – only for information purposes

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