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## Mandatory split payment mechanism in the light of Minister of Finance's explanations

In the tax clarifications published on December 23, 2019, the Minister of Finance attempted to explain to taxpayers how to apply the provisions on the split payment mechanism (SPM), which have been in force since November 1, 2019. The purpose of the clarifications is to present the functioning of mandatory SPM and complement previously issued clarifications regarding the optional SPM. Below are presented the selected guidelines from the most recent clarifications.

### GENERAL RULES

- Mandatory SPM will apply where the following conditions are jointly met:
  - transaction is concluded between VAT taxpayers,
  - the transaction is subject to VAT (does not apply to taxpayers under exemption),
  - the subject of transaction are goods or services indicated in Appendix no. 15 to the VAT Act,
  - the gross amount indicated on the invoice documenting the delivery of goods or services from Appendix no. 15 to the VAT Act exceeds gross amount of PLN 15,000.
- Indicated threshold of **PLN 15,000** refers to the total invoice amount, not the value of purchased goods/services listed in Appendix no. 15 to the VAT Act.
- If the gross invoice amount exceeds PLN 15,000 and the value of items included in Appendix no. 15 is lower (e.g. PLN 1,000), the obligation of using SPM occurs, but only in the part regarding goods/services from Appendix no. 15 (i.e. PLN 1,000). The remaining amount resulting from this invoice may also be partially or fully settled under SPM, but this is not an obligation.
- If service (e.g. construction) or goods delivery is settled in stages and partial invoices are issued, the limit of PLN 15,000 is calculated for each individual invoice, not in relation to the total value of the service/goods resulting from e.g. a contract.

### OBLIGATIONS OF TRANSACTION PARTIES

- The seller is obliged to include on the invoice documenting transactions covered by mandatory SPM the following **indication: 'mechanizm podzielonej płatności'** (which translates to: 'split payment mechanism'). The seller is also required to accept payment in this form.
- It is the buyer's responsibility to make payments in the way of SPM, regardless of whether the invoice includes the 'mechanizm podzielonej płatności' indication. Each party is therefore responsible for fulfilling their obligations.

<b>SETTLEMENT ACCOUNT</b>	<ul style="list-style-type: none"> <li>■ Taxpayers conducting transactions covered by mandatory SPM - both the seller and the buyer - must have at their disposal <b>a settlement account in a bank or a personal account in SKOK (credit union)</b>, since only for this type of accounts it is possible to open a VAT account.</li> <li>■ Payment covered by SPM must be settled into a VAT account in PLN, even if the contractors make their settlements in foreign currency. Therefore SPM applies to the amount of VAT in PLN indicated on the invoice. For the conversion of the PLN 15,000 threshold, the exchange rate as in accordance with the provisions of the VAT Act is applicable.</li> </ul>
<b>PAYMENT WITH DIFFERENT RATE THAN THE BANK TRANSFER</b>	<ul style="list-style-type: none"> <li>■ At the moment, payments under SPM can only be made with a bank transfer. Making settlements by card or a bill of exchange will not fulfil the SPM obligation.</li> <li>■ In this respect, it is not clarified whether the seller should refuse to accept payment in form differ from a bank transfer. The provisions impose only an obligation on the seller's side to accept payment in SPM, however it is the buyer's responsibility to initiate payment in this manner. Since the choice of payment method is the buyer's responsibility, omittance of SPM does not, in our opinion, constitute a violation by the seller.</li> </ul>
<b>SANCTIONS ARISING FROM VAT ACT</b>	<ul style="list-style-type: none"> <li>■ The VAT Act provides analogous sanctions for not complying with SPM obligations both for the supplier and the purchaser of goods or services.</li> <li>■ The lack of 'mechanizm podzielonej płatności' notification on the invoice results in a sanction of <b>30% of the tax amount indicated on the invoice</b> for the seller. To avoid the sanction, it is sufficient that the buyer settles the tax in accordance with the SPM rules. However, the incorrect invoice must be amended - either by an invoice correction or by a correction note issued by the buyer.</li> <li>■ A sanction of 30% of the tax amount also threatens the buyer for making payments without using SPM against such obligation. The seller can protect the buyer from this sanction by settling the entire amount of VAT resulting from the invoice.</li> <li>■ Sanctions are charged on the VAT amount of those units indicated on the invoice, which are covered by Appendix no. 15 to the VAT Act.</li> </ul>
<b>PAYMENTS FOR THE THIRD PARTY</b>	<ul style="list-style-type: none"> <li>■ If receivable being subject to an obligatory SPM has been seized by <b>a bailiff or an enforcement authority</b>, it causes the change of receivable's nature (it is no longer a payment for goods/services). While making payments to these entities, the purchaser is not obliged to settle under SPM.</li> <li>■ However, mandatory SPM will apply if the buyer settles the payment to <b>the factor</b> under the factoring agreement, to which the rights to the claims have been transferred - if the statutory conditions concerning SPM are met.</li> <li>■ The factor is jointly and severally liable with the seller for unsettled VAT and may be released from this liability only by paying to the seller/refund to the buyer in split payment.</li> <li>■ The Minister of Finance has also pointed out on the buyer's possibility to settle the VAT amount on the seller's VAT account while settling the net amount separately to the factor.</li> <li>■ Mandatory SPM does not apply to advance payments made by the factor under the factoring agreement, as they are used to fund the supplier's activities.</li> </ul>
<b>OFFSETTING MUTUAL LIABILITIES</b>	<p>If counterparties conducting transactions covered by SPM decide to settle payments by offsetting mutual liabilities, <b>SPM will not apply to the amount being subject to the deduction</b>. If, after making the deduction, there is still an amount to be paid, the difference must be settled in the SPM. However, this exception does not apply to multilateral compensations.</p>

<b>PENAL-FISCAL LIABILITY</b>	<ul style="list-style-type: none"> <li>■ The Fiscal Penal Code provides <b>fin</b>es for failure to comply with the obligation to make payments via SPM and for failure to mark the invoice with the note 'mechanizm podzielonej płatności'.</li> <li>■ In the event of imposing a fine on a natural person, no sanctions are placed under the VAT Act. However, it is possible that an additional VAT liability will be imposed on the company, and natural persons responsible for settlements will be subject to penal-fiscal liability for omitting SPM's obligations.</li> </ul>
<b>TAX NON-DEDUCTIBILITY COSTS</b>	<ul style="list-style-type: none"> <li>■ Obligation to exclude an expenditure from tax deductible costs under income taxes regulations applies only to the part where the payment under SPM was required (e.g. selected items in the invoice).</li> <li>■ The exclusion from tax deductible costs applies to cases where the invoice obtained from the seller included the note 'mechanizm podzielonej płatności' and was settled without SPM.</li> <li>■ The limitation of the deductibility of costs applies to invoices that were settled as tax costs after December 31, 2019 and with regard to payments made in the tax year following that date.</li> </ul>
<b>INVOICE CORRECTION</b>	<ul style="list-style-type: none"> <li>■ Correction of the invoice may cause settling the payment under SPM obligation, or may eliminate such obligation.</li> <li>■ Importantly, when the original invoice was not a subject to mandatory SPM, and after the "in plus" correction the invoice meets the conditions for the obligatory SPM, the buyer is obliged to settle in split payment only the mark-up resulting from the correction, without necessity of modifying the previous settlements.</li> </ul>
<b>DISPOSAL OF FUNDS FROM THE VAT ACCOUNT</b>	<ul style="list-style-type: none"> <li>■ Under new regulations the funds accumulated on the VAT account, in addition to their obvious purpose for payment of VAT liabilities can be used to settle <b>PIT, CIT, excise duty, customs duties, social insurance contributions</b>, as well as to regulate <b>penalty interest or additional obligations determined in VAT</b> (so called sanctions).</li> <li>■ At the same time, when applying for the transfer of funds accumulated on the VAT account to the taxpayer's settlement account/SKOK (credit union), the authority will approve the application after verifying that there are no arrears/liabilities in any of the above-mentioned taxes. The consent is issued by way of a decision to which the taxpayer may lodge a complaint.</li> <li>■ In addition, a possibility of requesting the release of funds from VAT account was introduced for former partners of a civil or commercial partnership without legal personality in the event of its dissolution.</li> </ul>
<b>COLLECTIVE PAYMENTS</b>	<ul style="list-style-type: none"> <li>■ Taxpayers can make payments using <b>single bank transfer for more than one invoice</b>.</li> <li>■ The condition is that all invoices received by the taxpayer from one contractor in a given settlement period are covered by one transfer - regardless of whether they documented transactions covered by SPM. The transfer should include the total amount of VAT shown on these invoices.</li> <li>■ Collective transfer may cover a settlement period not shorter than one day and not longer than a month. The transfer at this time should indicate the given settlement period (instead of the invoice number).</li> </ul>
<b>ADVANCES SETTLEMENT</b>	<p>Advances payments are also subject to mandatory SPM, however in order to properly determine the existence of the split payment obligation, the taxpayer must be able to <b>assign a specific advance to the invoice received later</b>.</p>
<b>TRANSITIONAL PROVISIONS</b>	<ul style="list-style-type: none"> <li>■ Mandatory SPM applies only to the supply of goods or services occurred after October 31, 2019, and for which the tax obligation arose and the invoice was issued after that day.</li> </ul>

- With respect to transactions for the supply of goods and services listed in the repealed Appendixes no. 11, 13 and 14 to the VAT Act, which took place before November 1, 2019, but the tax obligation arose or an invoice was issued after that date, the previous regulations regarding reverse charge/joint and several liability will apply.
- If supply took place after October 31, 2019 but the invoice was issued before November 1, 2019, the previous regulations will also apply.
- In the special event advance payment was settled under reverse charge and after completing the delivery the remaining amount from the invoice was settled under SPM, any potential correcting invoice should be settled in proportion to the value - by the buyer in the part covering the advance and by the supplier - in the remaining part of the correction.

## CONTACT

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