**Whitelist VAT, split payment, receipt without VAT. Find out about sanctions that have been in force since January 1, 2020.**

**From January 1, 2020, there are numerous tax consequences associated with payment to the non-whitelist account or bypassing the mandatory split payment, as well as for the exchange of invoices issued without the buyer's NIP and for using such invoice.**

The sanctions apply to both VAT (additional tax liability, joint and several liability of the buyer for the seller's VAT) and income tax (no [right](https://www.gazetaprawna.pl/tagi/prawo) to include expenditure in tax deductible costs). Some of them can be freed. However, the changes are so numerous that it is difficult to understand them.

Moreover, in practice, [sanctions](https://www.gazetaprawna.pl/tagi/sankcje) may overlap. For example, if the buyer buys goods from Annex 15 (covered by split payment) for an amount exceeding 15 thousand on the invoice. PLN, but will pay the seller to the savings and checking account (so to the non-whitelist account and without split payment, because VAT accounts are not created for ROR accounts):

* he faces a 30% sanction VAT for transfers outside of split payment,
* cannot include expenditure as tax deductible costs,
* may bear joint and several liability for the seller’s VAT,
* he faces a fiscal penalty (instead of a VAT penalty).

### Whitelist

One of the key changes are sanctions related to the VAT whitelist. From January 1 this year. the buyer who transfers to the non-whitelist account the amount due for [transactions](https://www.gazetaprawna.pl/tagi/transakcje) in excess of PLN 15,000 PLN, there is a risk of losing the right to recognize expenditure as costs.

Added to this is the previously introduced joint and several liability for the seller’s VAT if he did not settle the transaction tax.

To avoid this, it's best to transfer money to the seller's account on the white list. However, what if the buyer does not find it on the list kept by the head of the National Tax Administration?

Has three options:

* withdraw from the transaction,
* force the seller to register his invoice in the list and transfer money to this account,
* transfer money to the seller's account and notify the head of the tax office about the transfer to an account not on the list.

The latter solution can also be used by [taxpayers](https://www.gazetaprawna.pl/tagi/podatnicy) who, for other reasons (e.g. as a result of a mistake) transfer money to an account not on the white list.

The notification must be submitted within 3 days of the "transfer order day" (Article 117ba of the Tax Code). They must be submitted on ZAW-NR form and, equally important, to the head of the tax office competent for the invoice issuer, i.e. the seller.

However, if the buyer sends them to another office, it will be forwarded to the competent head of the Tax Office, and sanctions should not be imposed - results from tax explanations of the Minister of Finance published on December 23, 2019.

The minister also confirmed that only one notification for all payments can be made to the unregistered (whitelisted) account of the seller. The seller, on the other hand, cannot oblige the buyer to do so.

The buyer will also avoid joint and several liability for a transfer to an account outside the list if he pays the amount due in split payment. However, it will not avoid income tax sanctions. Here it is necessary to notify the head of the tax office within 3 days of ordering the [transfer](https://www.gazetaprawna.pl/tagi/przelew) (Article 22p (4) of the PIT Act, Article 15d (4) of the CIT Act).

Buyers have another option - they can pay with a payment card or via e.g. Blue Media or PayPal. This - as is clear from the tax explanations of the Minister of Finance of December 20, 2019 (p. 11) - will allow them to avoid both sanctions (in VAT and income tax), but beware - only as regards the consequences associated with the white list.

A card transfer will not help to avoid sanctions if the buyer has bought goods or services from Annex 15 and the invoice amount exceeds PLN 15,000. zł. In this case, only a transfer to a bank account (with VAT account) is involved.

#### See also:

* [Changes in taxes 2020. No split payment even more risky »](https://podatki.gazetaprawna.pl/artykuly/1446687%2Cbrak-split-paymentu-zmiany-w-podatkach-2020.html)

### Split payment

From January 1 this year a buyer who transfers outside the split payment the amount due for an invoice for a gross amount exceeding PLN 15,000 PLN, and regarding goods and services from Annex 15 to the VAT Act (it is sufficient for one item to relate to such goods or services) cannot include expenditure as tax deductible costs. This sanction only applies if the seller has marked the invoice with the words 'split payment mechanism'. If the supplier (service provider) did not do this, then the buyer will not bear the consequences in the income tax.

However, this does not mean that the buyer can transfer the payment outside of the split payment. The regulations require it to do so, even if the seller did not mark the invoice with the words "split payment mechanism". This is confirmed by the explanations of the Minister of Finance of December 23, 2019. "It should be noted that the obligation to pay the invoice amounts in the split payment mechanism is not dependent on whether a special mark was included on the invoice" - we read in p. 6.

A buyer who transfers the payment outside the split payment is also threatened by 30%. VAT penalty. It no longer matters whether the seller has marked the invoice with the words 'split payment mechanism' or not (see Article 108a (7) of the VAT Act).

How to avoid these sanctions? The regulations only give you the opportunity to evade sanctions in VAT. The buyer will not bear it if the seller correctly settles the VAT on the invoice, which should be paid in the obligatory split. However, split payment does not have such mechanisms as in the case of the white list. Therefore, you cannot notify the head of a transfer outside of a split payment, because the regulations do not provide this option.

Also, the buyer cannot avoid income tax sanctions for payment outside of a split payment. It must therefore expel expenses or increase revenues.

The buyer will not protect himself from sanctions by paying by credit card. If he was obliged to transfer the amount due in split paymenta, and would pay by card, then he would not have fulfilled his obligation. As a result, he may incur sanctions in VAT and lose the [right](https://www.gazetaprawna.pl/tagi/prawo) to classify expenses as tax deductible costs in income taxes. This results from the tax explanations of the Minister of Finance of December 23, 2019 (p. 4).

The buyer must also remember that if the invoice amount does not exceed 15,000 PLN, and applies to goods from Annex 15 (with the exception of those indicated in Article 105a paragraph 3 item 1 of the VAT Act), it may be jointly and severally liable for the seller’s VAT. In order to free himself from this responsibility, it is best for him to pay in a split payment (voluntary split payment).

Let's add that a VAT sanction, also in the amount of 30 percent, can also get a seller - for not marking the "split payment mechanism" on an invoice for an amount exceeding 15 thousand. PLN, concerning sensitive goods from Annex 15.

The seller will not incur a penalty for the lack of designation, if the buyer nevertheless pays such an invoice in split formula. It is therefore in the interest of the seller to quickly correct his mistake and notify the buyer to pay in the split payment, despite the fact that he received the invoice without the required mark. The seller may provide this information to the buyer in any form and by any means.

However, this does not release the seller from the obligation to correct the invoice issued incorrectly, i.e. without the required mark - the finance minister reminded in explanations of December 23, 2019 (p. 6). The minister added that the invoice may also be improved by the buyer with a corrective note.

### Simplifications related to split payment

In practice, some sellers are already simplifying their lives and all the invoices they issue are marked with the words "split payment mechanism". The Ministry of Finance confirms that this is possible. However, this strategy can only be good until the end of March. The problem will appear from April 1, 2020 (for large taxpayers) and July 1 this year. (for others) with the entry into force of the new JPK\_VAT. It will need to show which of the invoices issued are covered by the obligatory split payment. According to experts, the new JPK\_VAT will force sellers to mark only those invoices that are actually covered by this obligation, and not all.

Also, some buyers came to the conclusion that it is better to pay all invoices in a split payment. Such a strategy is also possible, but causes that sellers get the tax equivalent to their VAT account, to which they have limited access.

### Exchange of receipts for invoices

From January 1 this year. sellers are also at risk of exchanging receipts without a tax ID for invoices, and buyers - for including such invoices in their records. From art. 106b paragraph 5 of the VAT Act shows that only receipts from NIP can be exchanged. Otherwise, the seller and buyer may face a 100% penalty. the amount of VAT shown on the invoice.

There are exceptions to the ban on such exchanges. There will be no sanction if a company exchanges a ticket for passenger services on an invoice. You don't have to buy a ticket like this, so you don't have a receipt. It can then be exchanged for a simple invoice.

This means that the new rule of exchanging receipts from NIP for invoices applies only to sales recorded using a cash register.

### VAT, kks or both

The VAT Act and the Fiscal Penal Code provide that a natural person may incur either a VAT penalty or a fiscal penalty for an offense or tax offense. Therefore, he cannot be punished twice, once on the basis of the VAT Act, and the second on the basis of the Penal Code. This applies to offenses involving

* failure to mark the invoice with the words "split payment mechanism",
* payment of amounts due outside split payment, despite such an obligation,
* exchanging a receipt without a NIP for an invoice or - in the case of a buyer - using such an invoice.

In accordance with art. 57c of the Fiscal Penal Code of a buyer of goods and services for payment outside split payment threatens a fine of up to 720 daily rates. The seller, in turn, for not marking the invoice with the words "split payment mechanism" - a fine of up to 180 daily rates (based on Article 62 paragraph 1 of the Code).

As explained by the Ministry of Finance in tax explanations, it cannot be ruled out that a company (a legal entity) will be punished with a VAT penalty, and a person who is guilty of non-compliance will be subject to criminal penal liability.