

Payments from invoices without split payment mark must also be divided

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The obligation to pay under the split payment mechanism does not depend on whether a special mark has been included on the invoice. Even if the seller has not fulfilled his obligation and has not marked the document accordingly, the buyer is still obliged to divide the payment. This is confirmed by the latest interpretation of the director of the National Treasury Information.

Taxpayers still have problems with the use of the split payment mechanism and flood the treasury with questions about the interpretation of regulations. The latest answer concerns situations in which the seller – despite the obligation – did not include on the invoice the note about the obligation to use split payment.

It turns out that the lack of annotations about the mandatory split payment mechanism is a fairly common error in business transactions. The seller who issued such a document is obliged to correct it and issue a correcting invoice. The invoice may also be improved by the buyer in the form of a corrective note. The latest interpretation 2.4012.664.2019.2.PG additionally indicates that **the buyer must verify the object and value of the transaction, and is responsible for choosing the form of payment.** In such a situation, the obligation to use split payment, even if the invoice is not marked, the buyer must divide the payment.



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Split payment mandatory in some cases

The provisions on the mandatory split payment mechanism have been in force in Poland since November 1, 2019. Payment sharing is necessary for goods and services listed in Annex 15 to the VAT Act. **The invoice must contain an appropriate annotation in the form of the words "split payment mechanism" for all receivables whose total amount exceeds PLN 15,000. PLN gross made to one taxpayer.**

See the procedure in LEX: Obligation to use the split payment mechanism>

Bartłomiej Senderowski from the VAT, Excise and Customs team at the Ożóg Tomczykowski Law Firm points out that the obligation to pay in the split payment system will arise even if the invoice includes only one product or service listed in Annex 15 (even of low value), and the rest of the invoice value will consist of any services or goods not indicated in Annex 15.

The invoice needs to be corrected, otherwise penalties are required

- If it is found that the taxpayer issued an invoice without the annotation "split payment mechanism", the **head of the tax office or customs office will apply an additional 30% to him VAT penalty**. Although it does not set an additional tax liability in relation to natural persons, they may be liable for a tax offense or for a tax offense - emphasizes the expert. He adds that similar risks and sanctions also exist on the buyer's side, which, according to art. 108a paragraph 7 of the VAT Act is obliged to pay the supplier / service provider using a split payment mechanism when required by law. **The fact that the invoice did not contain an indication of the "split payment mechanism" would not prevent him from adverse tax effects.**

See the procedure in LEX: Collective payments using split payment mechanism>

Both parties to the transaction can avoid liability

In a situation where an error has already occurred in the invoice, as in the actual state of this interpretation, both parties have the means to **prevent sanctions and avoid liability**. Bartłomiej Senderowski explains that the incorrect invoice should first be notified to the seller, who will be able to correct it by adding the words "split payment mechanism". If the invoice is corrected, the buyer of goods or services will not be liable for the tax offense.

See the procedure in LEX: Sanctions for breach of the split payment mechanism>

The buyer is not entitled to correct the invoice **corrective note in which it indicates a specific** **note, it must be approved by the issuer of the invoice** **however, that it is necessary to have a signature**



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- The possibility for the buyer to issue a corrective note in the situation described in the actual state is a favorable approach of the authority to the subject. The buyer will in fact have evidence of the correctness of the invoice, e.g. in the event of a dispute with the seller – says Bartłomiej Senderowski.

See the procedure in LEX: Exclusion from tax deductible costs due to making payments in violation of the obligation to apply the split payment mechanism>

The interpretation is favorable but does not solve the problem

- It is hard to disagree with the position of KIS. **There is also no doubt that there are no contraindications for correcting such a faulty invoice by a corrective note.** In this regard, however, an interesting question arises, somewhat incidentally. It is a question of whether the acceptance of such a note by the seller is tantamount to "repairing" the invoice and automatically relieves the seller of potential sanction for an invoice error – indicates Piotr Leonarski, tax advisor and lawyer at Zięba & Partners.

The expert points out that although the interpretation of this thread does not develop, since the potential buyer is interested, it can be suspected that here the position of the administration would be more conservative. The interpretation only cites a provision indicating that the seller is free from payment by means of a split payment. Theoretically, however, one can imagine a situation in which the buyer issues a corrective note, but as a result of his mistake he makes payments without distribution. **It seems, therefore, that a safer solution from the point of view of the seller would be to issue a correcting invoice.**

- One should also remember about one practical issue important for the seller. Under the new regulations regarding VAT returns combined with the records, acceptance of the corrective note in this situation will require the seller to correct the declaration. The new records will require the marking of invoices, which are subject to the obligation of applying the split payment mechanism, so acceptance of the corrective note will require adjusting the records in this respect, which in practice means providing the tax administration with information that the invoice was not originally marked correctly – notes Piotr Leonarski.

This problem is unfortunately not the only one. January changes in documenting sales, issuing receipts and invoices or exercising due diligence are not all. April and July also require solid preparation.

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