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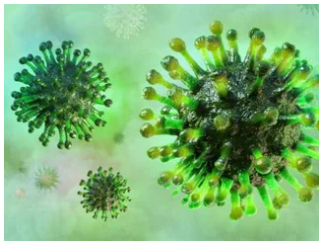

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author: **Łukasz Zalewski** 11.03.2020, 07:40; Update: 11.03.2020, 08:05

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The tax authorities do not accept payment notifications from taxpayers to a bank account not included in the list of the head of the KAS. Reason? Failure to meet formal requirements.

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According to experts, there are no grounds not to accept notifications. In practice, however, this happens, as taxpayers learn from correspondence received from tax offices. The offices inform taxpayers that the notification they sent does not meet the formal requirements.

What does this mean for recipients? Deprivation of the right to classify expenditure as tax deductible costs.

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One of those letters was received by the DGP reader. He transferred the amount due to the counterparty to an account that is not on the VAT list kept by the head of the National Tax Administration (white list). In order not to lose the right to classify the expenditure as tax costs, he notified the payment to the head of the tax office. However, the head replied briefly: "the letter does not meet formal requirements and was submitted without maintaining local jurisdiction, which is in contradiction with the cited provisions."

There are two reasons. First, the taxpayer did not submit a notice on the ZAW-NR form. Secondly, he sent them to the head of the wrong tax office, which he should have.

- The tax authorities cannot deprive the taxpayer of the right to classify the expenditure as tax deductible costs for these reasons - comments Agnieszka Bieńkowska, tax advisor and partner at Gekko Taxens.

He adds that, of course, you can understand the situation in which tax offices found themselves. From January, they receive dozens or hundreds of notifications submitted not to the office to which they should reach, and in addition each in a different form.

- But shifting this problem to taxpayers in this form is unacceptable - comments Bieńkowska.

What's more - the expert notes - even on the MF website you can still read that "the head who will receive a notification about a transfer order to an account that is not on the VAT list, and will not be competent for the invoice issuer, will forward such notification to the appropriate head of tax office '.

Where do these requirements come from?

We remind you that from January 1, 2020, if the value of transactions between active VAT payers exceeds 15,000 PLN, the buyer must transfer the payment to the seller's account on the white list. If he does not do so, he may face sanctions:

- no right to classify expenditure as tax deductible costs,
- joint and several liability with the seller for unsettled VAT on this transaction.

However, you can free yourself from sanctions:

- notifying the head of the tax office about a transfer to an account not on the white list,
- by paying the amount due in split paymenta, but in this way the buyer will avoid effects only in VAT, and will not avoid income taxes,
- by paying debts with payment cards, as well as online transactions carried out by electronic intermediaries, such as Blue Media or PayPal (this is due to the tax explanations of the Minister of Finance of 20 December 2019).

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They choose the notice

Most taxpayers, wanting to include expenditure as tax deductible costs, decide to notify the head of the tax office.

There are only three days from the date of ordering the transfer, and the notification must be sent to the head of the tax office competent for the seller (invoice issuer) and not for the buyer. It results from art. 117ba parish 3 of the Tax Code.

A template for such notification (ZAW-NR print) was specified by the Minister of Finance in the Regulation of 23 December 2019 (Journal of Laws of 2019, item 2530).

The formula is optional

According to Agnieszka Bieńkowska, the authorities have no reason to claim that the notification submitted in a form other than on the ZAW-NR form is ineffective.

The expert draws attention to art. 117ba parish 5 of the Tax Code. It shows that the minister defined the model ZAW-NR not "to enable" the notification (as in the case of tax returns and declarations), but "to simplify and streamline the notification process". And this is a significant difference. According to the expert, this means that the minister did not have to issue a regulation specifying the template for the notification, and the one he specified is not mandatory.

- ORD-IN print works in a similar way, in relation to which it has been widely accepted for years that it is not obligatory, although it was also published by way of regulation ("to ensure efficient service of applicants") - reminds Agnieszka Bieńkowska.

He also notes that the possibility, and not the obligation to use the notification template, was written by the Ministry of Finance itself in the justification to the draft amendment introducing the white list provisions. - It was simply pointed out that the delegation for the Minister of Finance to issue the specimen was optional because of the fact that art. 117ba of the Tax Code already contains a list of data that should be included in the notification - the expert notes.

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To which office

It is also incomprehensible to her to state that the notification was not successfully submitted because it was sent to the tax office competent for the buyer (taxpayer) and not for the invoice issuer (supplier).

The expert reminds that in practice determining the properties of the tax office creates taxpayers big problems. This was signaled immediately after the adoption of the white list regulations.

- In response, the Ministry of Finance reassured that even if the notification is not made where it is needed, there is no problem, the offices will send such letters among themselves - reminds expert Gekko Taxens.

This position was also confirmed by the director of the National Treasury Information, e.g. in the interpretation of 16 January 2020 (No. 0111-KDIB1-2.4010.481.2019.2.ANK). He stated that if the tax authority to which the application was filed is incorrect in the case, he should immediately forward it to the competent authority, notifying the applicant thereof.

This principle results from art. 170 par 1 of the Tax Code and - according to Agnieszka Bieńkowska - should also be adopted in relation to notifications of payment to an account not included in the white list.

It's supposed to be milder

The current requirements resulting directly from the regulations are very restrictive, which was admitted by the Ministry of Finance, proposing amendments to, among others just art. 117ba of the ordinance.

First of all, the notice period will be extended from three to seven days. In addition, you will not have to submit it to the head responsible for the seller, and your own (competent for the payer). The problem is that the draft is still in the Sejm (Sejm Print No. 207).

The draft amendment will also remove another problem. At present, it is not clear from the regulations whether a notification should be submitted to the head of the tax office once or after each transfer to the account of the same contractor (to an account not on the white list), even if it has already been reported to the tax office.

The Ministry of Finance has so far ensured several times (among others in DGP) that who pays to the contractor's account not appearing in the list of the head of the KAS, he will not have to report it to the tax office every time. However, this favorable position has no confirmation in the regulations. Doubts in this respect are yet to be dispelled by the proposed amendment.

See also:

- What CIT and VAT when paying to a bank account not included in the white list »

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