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Article

Payment of loan (credit) financing and the White List Decision on individual interpretation by the Director of KIS

Bulletin of the Tax Advisory Team for Financial Institutions Expert Comment 4/2020 June 4, 2020

In economic reality, often actual payments are not made directly between the recipient of the goods (recipient) and the supplier (service provider). Entrepreneurs can finance their purchases e.g. with factoring or a loan (credit). In the case of credit (loan), there may be a situation in which the amount of financing granted to

can finance their purchases e.g. with factoring or a loan (credit). In the case of credit (loan), there may be a situation in which the amount of financing granted to the client is paid on the basis of the client's instruction to the bank account of the other entity being the client's supplier indicated by him. In other words, the lender (lender) carries out the payment of financing directly to the client's supplier as part of the transfer institution. There may then be doubts related to the use of the White List - whether such a payment made by the lender (lender) is covered by the regime of art. 12 paragraph 4i of the CIT Act?

White list and art. 12 paragraph 4i of the CIT Act

This issue was the subject of the decision of the Director of KIS, who in the individual interpretation of 27.02.2020 (No. 0114-KDIP2-2.4010.535.2019.3.AG) decided that when paying funding to the account of the client's supplier, the Bank is obliged to apply Art. 12 paragraph 4i of the CIT Act.

In the case of payment (over PLN 15,000) to an account not included in the White List (if the delivery of goods or services is confirmed by an invoice and were made by active VAT taxpayers), the basic sanction is the loss of the possibility of including such an expense as tax deductible. To avoid circumvention of this sanction through payment by a third party for which the payment is not a cost, the provision of art. 12 paragraph 4i of the CIT Act.

“

According to it, if a taxpayer who, pursuant to a contract concluded with a supplier or a buyer, is obliged to collect a payment from the buyer for the supply of goods or services and to transfer it in whole or in part to the supplier, will make this payment by transfer to an account not on the White List, this taxpayer (broker) determines the income in the amount of such payment

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- notes **Karolina Stańczak**, Manager in the Tax Advisory Department.



Article 12 para. 4i of the CIT Act is therefore a special regulation provided for third parties (e.g. in connection with a factoring contract, assignment of receivables, transfer or similar contract) making payments to the supplier (service provider) to an account that is not on the White List. As it results from the justification to the amendment introducing the discussed provision, the legislator's goal was to cover the factors. The essence of factoring is financing precisely by making a payment to the supplier and assuming by the factor claims arising from this.

Is the sanction provided for in art. 12 paragraph 4i of the CIT Act should apply to the lender (creditor) paying out funds due to the financing granted?

In the interpretation cited from 27.02.2020, the Director of KIS decided that the payment of funds to the account indicated by the borrower, which may not be on the White List, will constitute payment for the transaction between the borrower and the supplier (service provider). Due to the fact that the borrower, after transferring funds by the Applicant, will no longer make another payment for these goods or services, according to the Director of KIS, the payment of funds by the lender should therefore be considered a payment for the supply of goods or services to which it applies provision of art. 12 paragraph 4i of the CIT Act. Therefore, if the creditor pays funds to the indicated account of the supplier who does not appear on the White List, he should recognize tax revenue in this respect, unless he submits a notice of such payment to the tax office.

The actual payment to the supplier's account is made by the creditor, but whether the mere fact of making the payment to the supplier is sufficient to consider that this entity should be included in the order of art. 12 paragraph 4i of the CIT Act as well as the factor? First of all, unlike factoring, in the light of civil law provisions, there is no transfer of rights by the supplier to the lender of the claim for the supply of goods or services. In addition, from Art. 12 paragraph 4i of the CIT Act, it relates to a situation when a third party makes payments to the supplier on the basis of a contractual obligation. It seems that the interpretation cited does not refer to the above aspects.

What do the White List explanations say?

The Ministry of Finance itself in its tax explanations issued on December 20, 2019 regarding the White List indicated payment cases when payment to an account from outside it is not sanctioned. Among such payments, the Ministry indicated payments made by insurers to third party claims adjusters. It was indicated that such payment constitutes the realization of liability for damages towards the insured / beneficiaries, and not payment for the invoice. Due to the special nature of the legal relationship, there is no need for such payment by insurers on the account on the White List.

However, for other types of payments, although they may appear to follow a similar pattern as insurers' payments to repair companies, the provisions of the tax explanations do not provide taxpayers with protection resulting from compliance with their content.

“ The discussed individual interpretation of 27.02.2020 shows that each payment made by a third party who is not a buyer of goods or services should be analyzed separately. Therefore, such payments made as part of broadly understood financing should be given particular attention in the context of applying the White List regulations and the position of tax authorities in this respect should be monitored. ”

- emphasizes the author.

Undoubtedly, as in the case of new regulations, there will be disputes in this regard with the bodies that will be decided by administrative courts. However, we will have to wait a little longer for these decisions.

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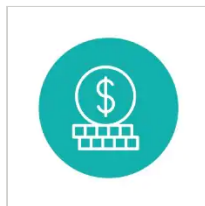
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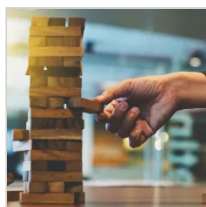


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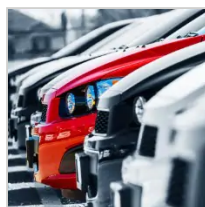


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