

Mandatory split payment

January 2019

In brief

On January 23, 2019, the European Commission published a draft of derogation decision enabling the Republic of Poland to introduce a mandatory split payment mechanism for selected goods and services.

Key information

The project assumes that Poland has the right to use the obligatory split payment in the period from March 1, 2019 to February 28, 2022. Below we present the most important information resulting from the draft derogation decision:

- the obligatory split payment applies only to transactions made between taxpayers (B2B), which are subject to VAT in Poland;
- the obligation to use the split payment mechanism will cover selected goods and services (discussed in more detail below);
- the obligatory split payment will only cover transactions settled by means of bank transfers;
- foreign entities settling transactions by means of bank transfers subject to VAT in Poland will be obliged to open a bank account in Poland;
- new invoice layout requirements will be introduced in order to

mark an invoice documenting delivery of goods / services subject to the mandatory split payment method.

Goods and services covered by the mandatory split payment

According to the annex to the draft derogation decision, the split payment mechanism can obligatorily be applied to 152 product and service groups defined in accordance with the Polish Classification of Products and Services (PKWiU) from 2008.

In general, the following groups of goods and services can be distinguished:

- steel products, precious metals, non-ferrous metals;
- waste, scrap, recyclable materials;
- electronics, specifically: processors, smartphones, phones, tablets, net-books, laptops, game consoles, inks, toners, hard drives;
- fuels for cars, fuel and lubricating oils;

- greenhouse gas emission rights;
- building and constructions services;
- coal;
- sale of car and motorcycle parts.

What should be done?

Legislative process

The Ministry of Finance announced that it plans to introduce the mandatory split payment mechanism in mid-2019. Currently, there is no draft national legislation available in this regard yet.

The draft of the decision indicates the widest possible scope of introduction of the obligatory split payment. It is likely that the Ministry of Finance will try to implement the decision in its entirety. Impact of the introduction of such a mechanism on the automotive industry should be comprehensively analyzed and conclusions need to be provided to the Ministry with especial focus on the risks that a mandatory split payment may cause to the

industry. Only for a limited time there will be an opportunity to possibly influence the final shape of these regulations as part of public consultations within the legislative process.

Key question – cash flow impact and gathering of illiquid funds on a VAT account

The obligatory split payment will, to a large extent, cover those categories of goods and services which are currently subject to a reverse charge if taxable locally. Depending on the situation of a given company, obligation to use split payment on a large scale may lead cash flow distortions and limited liquidity.

Accumulation of funds on the VAT account may occur as a result. Proper modelling of this phenomenon will allow to estimate the scale of the problem and prepare counter measures.

Getting your business ready

We believe that as a first step it is necessary to determine to what extent the new regulation will affect our business. Significant doubts are related with referring to the type of a business activity

(sale of parts) and not specific goods. Our experience also indicates that the PKWiU code does not always identify goods or services in a sufficiently precise way.

We suggest to roughly scale the problem (what percentage of sales / purchases will involve split payment) and verify what actions will be necessary to implement this mechanism for its scale. The company's finances (liquidity of the company), accounting, invoicing, payment processing as well as legal aspects should all be taken into careful consideration.

Limitations of split payment method

Based on experience with how the voluntary split payment works, it should be assumed that some functional limitations of this mechanism will also appear in its mandatory variant. As an example, currently split payment method can be used only for single invoice payments (it is not possible to pay via split payment with a single payment for multiple invoices).

Once this method becomes mandatory, such limitations

may cause serious problems if they will appear on a wide scale basis. It would be advisable to be prepared to face such difficulties.

Mandatory nature of split payment

The mandatory nature of the split payment will likely cause the Ministry of Finance to introduce regulations penalizing lack of application of this mechanism. At the current stage, it is not known whether there will be some specifically implemented provisions or general reference to the penal fiscal code will be utilized.

In the case of a short vacatio legis there is a real risk that the time for introducing, testing and optimizing the functioning of the mandatory split payment mechanism may not be sufficient.

If you believe your business might be impacted by the upcoming mandatory split payment we encourage you to contact us in order to discuss this in a more detailed manner.

Let's talk

In case of any doubts and questions related to above information please contact with persons indicated below:

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