



*Dear Sirs!*

*As of 1 July 2018 new legislative provisions will enter into force, introducing the split payment mechanism to the Polish Valued Added Tax Act. Due to the foregoing, please find below some guidelines concerning the most important issues relating to the split payment mechanism.*

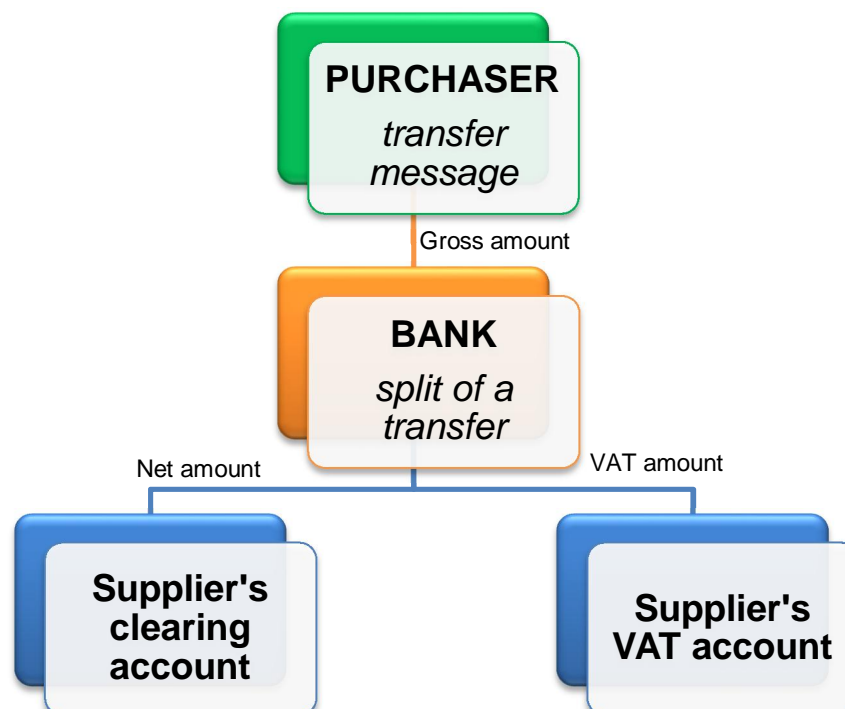
## 1. INTRODUCTION

For some time, the Ministry of Finance has been consistently implementing solutions aimed at closing loopholes, i.e. improving collection efficiency in VAT. The solutions which have been implemented by the Ministry of Finance so far for the purpose of fighting VAT irregularities were of an ad hoc nature and focused on particularly sensitive sectors of the economy (e.g. submitting certain transaction types to the national reverse charge mechanism), but the split payment mechanism is a complex solution aimed to reduce VAT fraud at the very stage of the transaction.

## 2. SPLIT PAYMENT – MAIN ASSUMPTIONS

### a. Essence of the split payment mechanism

The split payment mechanism is a system of payments in which the gross amount payable to the supplier is divided into **two separate streams – the net amount and VAT**. Consequently, the entire payment received from the purchaser in the transaction is to be made to two separate bank accounts, namely the main clearing account used by the taxable person and a dedicated VAT account. The essence of the mechanism is shown in the following chart:

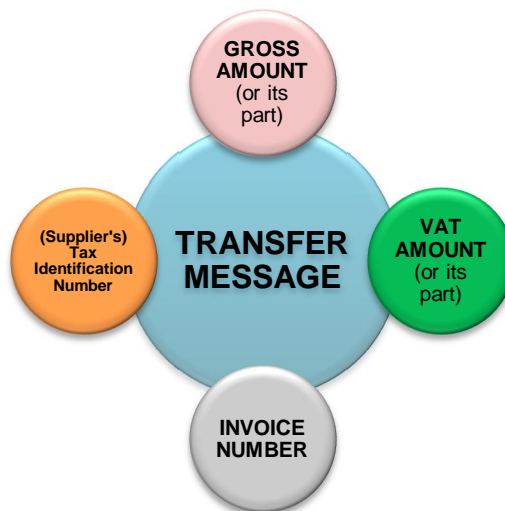


## b. Voluntary nature of the system

In compliance with the provisions incorporating the split payment mechanism into the Polish VAT Act, a split payment is of a **voluntary nature**.<sup>1</sup> In other words, the purchaser decides at his own discretion whether the payment for a transaction is to be made according to rules that have been in effect so far (standard payment) or by means of a dedicated transfer message in split payment mechanism. The purchaser will not need the supplier's consent to use the split payment method. Nor will he need to inform the supplier that the transfer is being made by means of the split payment mechanism. In practice there may be situations where the supplier receives a payment divided into a net amount and VAT although he is not interested in this payment method.<sup>2</sup>

## c. Transfer message

A payment in the split payment mechanism will be made via one bank transfer by means of a special “**message transfer**”.<sup>3</sup> The individual elements of such communication are shown in the following chart.



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<sup>1</sup> We would also like to point out that, in early May 2018, the Council of Ministers adopted a proposal (which was later submitted to the European Commission) permitting the obligatory implementation of the split payment mechanism for some especially vulnerable industries (e.g. electronic industry).

<sup>2</sup> According to the official information received from the Ministry of Finance, the parties to a transaction may enter into an agreement stating that payments using the split payment mechanism are not allowed. However we would like to point out that, from the VAT perspective, if the purchaser uses the split payment mechanism to make a payment contrary to the contractual provisions, such an operation cannot be reversed. However, the seller may pursue claims in civil law against the purchaser (e.g. claim liquidated damages).

<sup>3</sup> This is the term used by the legislators in the amended provisions. It refers to a special form of bank transfer, which is to be prepared and made available by banks.

**NOTE: The banks which are used for split payments are not required to verify whether a purchaser enters correct data in the transfer message.**

**d. Liability for VAT transferred to a wrong bank account**

Due to the foregoing, in the practice of economic transactions it may happen that an error in the transfer message generated by a purchaser results in the VAT amount in the transaction being transferred to the VAT account of a different entity (not the actual supplier who has issued the invoice). The entity which receives such undue payment into its VAT account shall be held jointly and severally liable with the actual seller for VAT that has not been paid for such seller (up to the amount unduly received into its VAT account).



The joint and several liability shall be excluded if:

- the unduly received payment is transferred to the VAT account of the actual seller;
- the received amount is returned to the taxable person's account from which such payment has been received, immediately after its recipient has become aware of receiving such payment.

**In relation to the foregoing regulation, we recommend that the VAT account should be monitored on an ongoing basis.**

**e. To what transactions will the split payment mechanism apply?**

The possibilities for applying the split payment mechanism are shown in the following table:

 <b>POSSIBLE APPLICATIONS OF SPLIT PAYMENT</b>	 <b>APPLICATION OF SPLIT PAYMENT IMPOSSIBLE</b>
Between business entities registered for VAT (B2B transactions)	Between a business entity and a natural person as a consumer (B2C transactions)
<b>To bank accounts denominated in PLN</b>	In bank transfers made in foreign currencies
<b>In bank transfers made in PLN only</b>	For collective payments
For payments of both whole amounts due and parts thereof	For cash settlements and card payments

**3. VAT ACCOUNT**

**a. Establishment of a VAT account**

A VAT account to which the VAT generated by a transaction (in the amount specified by a purchaser) is to be paid is of key importance for the split payment system. Such a non-interest bearing VAT account will be generated **automatically and without additional**

**charge** by the banks.<sup>4</sup> In principle, regardless of the number of clearing accounts held by a taxable person, a bank shall open only **one common VAT account** for that taxable person.<sup>5</sup>

The funds kept in a VAT account will remain the taxable person's assets but they may be used only in cases specified directly in the Act.

#### **b. Crediting and debiting the VAT account**

Only funds coming from the following sources may be credited to a VAT account:

- Payment of an amount corresponding to the whole balance, or a part, of VAT in a transaction, to be made by the counterparty;
- VAT payment for intra-Community acquisition of fuel in the name of the paying agent;
- From another VAT account in the same bank;
- Refund of the VAT amount stated in a credit/debit note issued by a counterparty;
- Refund of excess of input VAT over output VAT, to be made by a tax office.

A VAT account may be debited only for:

- Payment of VAT to a counterparty's VAT account;
- Refund of the VAT amount stated in an issued credit/debit note to a purchaser's account;
- Payment of default interest and additional VAT liabilities (to the account of a tax office);
- VAT payment for intra-Community acquisition of fuel in the name of the paying agent;
- Refund of undue VAT to another VAT account;
- Transfer of funds to another VAT account of the taxable person in the same bank, by means of a specific transfer message, the so called "own transfer";
- Bank account levy under an administrative execution warrant relating to enforced collection of VAT;
- Transfer of funds to the account specified in a decision of the Head of a Tax Office, the so called "release of funds".

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<sup>4</sup> **Including foreign banks and credit institutions that have a branch in Poland.**

<sup>5</sup> At a taxable person's request, a bank may maintain more VAT accounts for one holder. For instance, if a business entity holds three clearing accounts in the same bank, it may request three separate VAT accounts. But if a taxable person has several clearing accounts in various banks, it will not be possible to combine its VAT accounts into one account among these banks.

### c. Release of funds from a VAT account

According to the legislative provisions that are about to enter into force, a taxable person **may have a possibility to “release funds”** from its VAT account and transfer them to its regular bank account for which the VAT account is held.

In order to “release funds”, it is necessary to **submit a request** to the Head of the Tax Office of applicable jurisdiction and specify the amount that is to be “released”. Then the Tax Office has **60 days to consider the request submitted by the taxable person**.

If the outcome of the consideration of the request is positive, the Head of the Tax Office issues a **decision** stating the amount of funds that is to be “released” and sends the bank information necessary for the proper implementation of the decision via electronic means (bank account number where the funds are to be transferred and the amount of such funds to be “released”).<sup>6</sup> Then the bank is under the obligation to implement the decision immediately.

The Head of the Tax Office can also refuse to “release” funds requested by a taxable person. If this is the case, a negative decision is issued.<sup>7</sup> The legislators have defined certain qualifications for such a decision, stating that it is:

- Obligatory if a taxable person has VAT arrears – in the amount corresponding to such tax arrears and default interest as at the date of the decision;
- Optional in cases of justified concern that:
  - VAT liabilities will not be met by the taxable person, in particular where the taxable person persistently fails to pay its VAT liabilities or undertakes activities aimed at disposal of assets, which may impede or prevent enforcement of liabilities; or
  - Tax arrears or additional tax liabilities are determined (VAT sanctions).

## 4. BENEFITS RELATED TO SPLIT PAYMENT

The legislators have introduced a system of incentives for taxable persons who decide to apply the split payment mechanism on a voluntary basis. Such incentives include:

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<sup>6</sup> We would like to draw your attention to the fact that the amount accumulated in a VAT account as at the date of the enforcement of a decision may be different than the amount on the date of the request. If on the date of the implementation of the decision there are less funds in the VAT account than specified in the request, the bank shall “release” the available balance only. If this is the case, the obligation resulting from the decision is considered to be fulfilled in full.

<sup>7</sup> Such decisions may be appealed against by taxable persons (appeal to a higher instance or a complaint filed with the administrative court).

- no joint and several liability and tax sanctions in the case of some transactions (up to the amount of tax corresponding to the balance of tax from a received invoice and paid by means of the split payment mechanism);
- no higher interest charges if the split payment mechanism is used for at least 95% of transactions;
- use of the split payment mechanism is to be treated as one of the main conditions of “good faith” in respect of VAT.

NOTE: These incentives will not be applied if it is found that the taxable person knew that an invoice paid by means of the split payment mechanism had been issued by a non-existing entity or that it documented activities that had not been actually performed or specified amounts that did not reflect actual facts.

Other benefits resulting from the split payment mechanism include faster VAT refunds: at a taxable person’s request submitted along with its VAT return, the respective Tax Office is required to refund recoverable tax to its VAT account within 25 days. The Head of the Tax Office cannot extend this period. Every taxable person may request a faster VAT refund – regardless of whether the invoices charging the tax have been paid by means of the split payment mechanism or not. In practice, a taxable person will decide in its updated VAT return whether the refund of the excess of input VAT over output VAT is to be made to its VAT account or to an ordinary clearing account.

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*The information presented in this paper is of a general nature only and shall not be treated as tax advice. Please consult a Taxpoint advisor before making any decisions or initiating any activities related to specific circumstances in your business activity.*