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Report on payment deadlines in commercial transactions

A few years ago, a new requirement was imposed on Polish taxpayers to prepare reports on the payment deadlines applied in commercial transactions, also known as payment backlog reporting obligation.

In January 2020, Article 13a was added to the Act of 8 March 2013 on **counteracting excessive payment delays in commercial transactions** ("Payment Backlog Act"). It puts executive officers of certain entities under an obligation to report on payment deadlines applied in commercial transactions during the previous calendar year. Initially the reporting obligation was defined broadly and applied to entities indicated in Article 27b.2 of the CIT Act, i.e. tax capital groups, entities with annual revenues over EUR 50 million and real estate companies (including those belonging to tax capital groups) regardless of their revenues. This caused quite a stir in the market, especially in the context of small companies possessing small real properties and with relatively low revenues. Some experts even argued that such small entities were put under the obligation to report payment backlogs by accident. Perhaps there was some truth in these speculations, because later legislators amended Article 13a of the Act and narrowed down the list

of reporting entities.

Who is obliged to report?

This year, the following tax payers other than tax capital groups are obliged to report on **payment deadlines applied in commercial transactions** during the previous calendar year:

- tax payers whose revenues (obtained in FY ended in the calendar year preceding the year of individual taxpayer's data publication) exceeded the PLN equivalent of EUR 50 million converted at the NBP exchange rate from the last business day preceding the year of the public announcement of individual taxpayer data, and
- tax payers included in the list published by the Minister of Finance by 30 September of the year for which the report is submitted.

Hence it should be noted that verifying whether the thresholds specified in the Act have been exceeded or not

is not enough – one also needs to check the Public Information Bulletin to make sure that the entity is on the list drawn up by the minister competent for public finances. According to the interpretations available, an entity that, despite meeting the revenue criteria, is not included in the above-mentioned list (published by the date specified above), will not be obliged to prepare the report.

Who is responsible for reporting?

Executive officers, i.e. members of the management board or any other management body, persons performing the functions of the management body or, if the entity does not have any structure of that kind, persons managing the activities of the given entity are **responsible for timely submission of the report**.

The Minister of Development and Technology publishes a summary **list of all filed reports** in the Public Information Bulletin and forwards

the reports to the President of the Office of Competition and Consumers Protection (UOKiK). UOKiK is also informed which entities did not report the data on time. The President of UOKiK may use this information when analysing the probability of excessive delays in cash transfers.

Failure to submit the report within the prescribed deadline is considered an infraction and may result in a fine. It needs to be pointed out that all members of the management body are **held liable for non-fulfilment of the reporting duty**. Conversely, when the payment backlog report is submitted by one or more persons (depending on the rules of representation adopted), this fact relieves all others of the liability, regardless of whether they were involved in the process or not.

How and when to report?

The report should be filed electronically by **30th April of the following year**. If it is submitted by a holder of the power of attorney, the appropriate authorization must be attached to the report (the regulations do not impose specific requirements as to the form of the authorization document). If a commercial proxy files the report, the relevant excerpt from the National Court Register confirming the establishment of the proxy should be enclosed. In both situations the stamp duty needs to be paid and the

receipt should also be attached to the report.

Reports on payment deadlines should be filed using the dedicated form available from: www.biznes.gov.pl. Filing is free of charge (except for the stamp duty requirement). Importantly, the reporting duty concerns calendar years, so **the date of submission and the period covered by the reporting obligation** do not depend on the financial year adopted by the entity. In consequence, ensuring data completeness in companies whose financial year does not correspond to the calendar year may involve additional workload.

What to include in the report?

In accordance with the requirements laid down by the Payment Backlog Act, the taxpayer is obliged to report the following data:

- company name and tax identification number;
- value of cash transfers:
 - received in the previous calendar year within the deadline specified in the contract;
 - paid in the previous calendar year within the deadline specified in the contract;
 - not received in the previous calendar year within the deadline specified in the contract, if the deadline was exceeded by no more than 5 days,

6 to 30 days, 31 to 60 days, 61 to 120 days, more than 120 days;

- not paid in the previous calendar year within the deadline specified in the contract, if the deadline was exceeded by no more than 5 days, 6 to 30 days, 31 to 60 days, 61 to 120 days, more than 120 days;
- percentage share of cash transfers not received in the previous calendar year within the contractual deadline (within the specified timeframes) in the total value of cash transfers receivable by the entity in the previous calendar year;
- percentage share of cash transfers not paid in the previous calendar year within the contractual deadline (within the specified timeframes) in the total value of cash transfers payable by the entity in the previous calendar year.

The report does not cover cash transfers based on commercial transactions in insurance and reinsurance, cash transfers based on commercial transactions concluded only by entities belonging to the same capital group, and cash transfers whose limitation period has expired.

As per the guidelines provided in the publication "Reports on the payment deadlines applied in commercial transactions. Practical Guide" ("Guide") available on the website of the Ministry of Development and Technology, the value of cash transfers in foreign currency should be translated into PLN in accordance with

the accounting principles adopted by the entity.

Before 30 September 2023 (when the Minister of Finance is due to publish the list of reporting entities), **companies that may be subject to the reporting obligation should analyse their systems and settings** to determine whether efficient generation of data needed to prepare a payment backlog report is possible. It may also prove useful to check in advance which transactions should be reported and whether the company is not exposed to the negative consequences of payment delays – if the financial situation allows it. Our practical experience shows that preparing data for reporting purposes often turns out to be time-consuming and complex, because many doubts arise when qualifying cash transfers as eligible for

reporting or not. Despite the exclusions contained in the Financial Backlog Act, taxpayers still tend to interpret them in different ways. This is only one of many reasons why leaving the matter for the last minute is not advisable.

If you need assistance in identifying transactions that will fall under reporting requirements or in fulfilling the reporting obligations, our multidisciplinary team is ready to offer solutions. **We have extensive experience** linked with the practical aspects of applying the provisions of the Payment Backlog Act, also in relation to the obligation to submit a report on payment deadlines in commercial transactions.

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