

Split payment



Purple Guide

a source of information

We are pleased to present another edition of the “Purple Guide”, that is, a cycle of analyses, in which we discuss legal, accounting and human resources issues important for entrepreneurs. This time, the topic of our cycle comprises issues related with split payment mechanism.

We encourage you to read on.

Another amendment to the VAT Act introduces a new solution: an additional payment method aimed at tightening the tax system. Provisions regarding the split payment enter into force on 1 July 2018.

Amendments have been introduced under the Act of 15 December 2017 on amendment of the VAT Act and certain other acts (Journal of Laws of 10 January 2018, item 62).

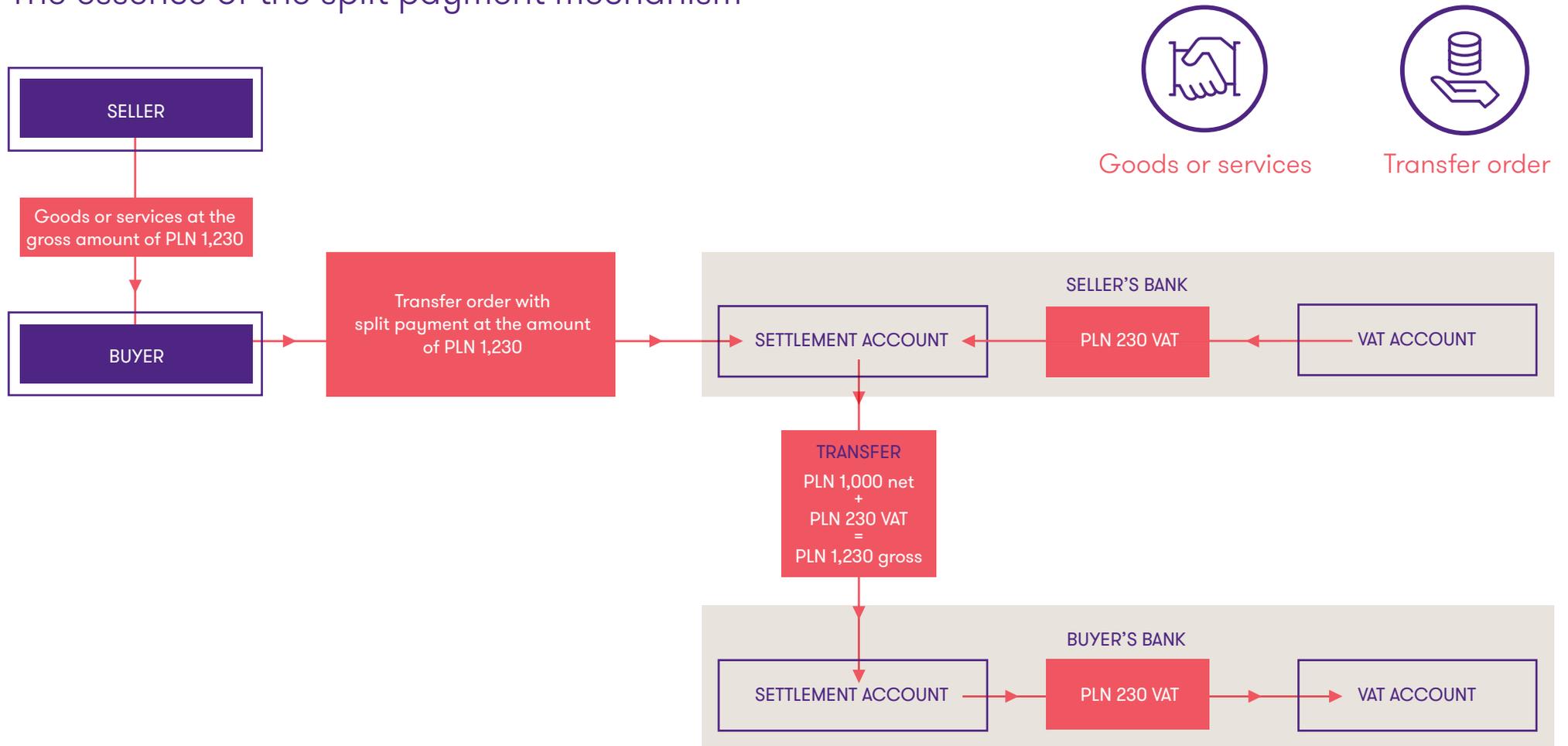
The method applies solely to transactions executed to the benefit of other taxpayers. Application of this method shall be decided on by the parties to the transaction, which means that using this mechanism is voluntary. As explained by the Ministry of Finance, the voluntary split payment is aimed as an instrument for entrepreneurs to protect them against consequences of transactions with unreliable contractors. Additionally, using the mechanism shall constitute one of prerequisites to prove the buyer’s due diligence in verifying the contractor with whom they entered into a transaction.

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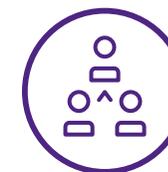


Split payment

The essence of the split payment mechanism



Split payment



B2B transactions

How to use the split payment mechanism?

The split payment mechanism concerns transactions entered into by entrepreneurs, i.e. B2B transactions.

It comprises:

- payment of an amount corresponding to the whole amount of tax or a part of it resulting from the received VAT invoice, made to the VAT account;
- payment of an amount corresponding to the whole amount of net value of sales or a part of it resulting from the received invoice, made to the bank account or to the account at a credit union (SKOK), for which a VAT account is kept or settled in other manner.

The bank or SKOK automatically opens a VAT account to the entrepreneur's settlement account. Opening and keeping the VAT account does not require concluding a separate agreement and is free of any additional commissions and fees for the bank.

With regard to settlement accounts of the same holder, the bank keeps one VAT account irrespectively of the number of settlement accounts kept for them. Nevertheless, on application of the holder of more settlement accounts, the bank opens more than one VAT account.

In the case of settlement accounts kept by Narodowy Bank Polski (National Bank of Poland) for the same holder,

the Bank keeps a VAT account for each settlement account. Narodowy Bank Polski (National Bank of Poland) keeps a VAT account for more than one settlement account for the same holder on their application or pursuant to the provisions on public finances.

Payments are made by the buyer of goods/services solely in PLN currency or via a wire transfer communication made available by the bank or SKOK, in one wire transfer.

No batch payments can be made.

The following information should be given in the wire transfer communication:

- a number of the invoice related with the payment;
- a number with which the supplier of goods or the provider of goods is identified for VAT purposes (TIN);
- an amount corresponding with the whole or a part of the tax amount resulting from the invoice;
- an amount corresponding with the whole or a part of gross value of sales.

Then, the bank shall automatically divide the amount due to the invoice into a net amount, which shall be transferred to the seller's settlement account and a VAT amount, which shall be transferred to the seller's VAT account.

The VAT account number is not disclosed on invoices.

The seller can refund the whole or a part of the payment via the wire transfer communication by giving the buyer's TIN (where the seller's TIN is given), if they decrease the tax base by:

- amounts of discounts and rebates granted after sales;
- value of returned goods and packaging;
- a whole payment refunded to the buyer or a part of the payment received before sales, if the sales had not completed;
- issuing an adjustment decreasing the tax amount due to a mistake.

Attention!

If the payment is made with the use of the split payment mechanism to the benefit of other taxpayer than the one indicated in the invoice then, this taxpayer is jointly and severally liable with the supplier for VAT unsettled by the supplier of goods/services resulting from this supply of goods/services up to the amount received to the VAT account. Joint and several liability of this taxpayer is excluded, if they make payment to the VAT account of the supplier of goods/services specified in the invoice or refund received payment to the VAT account, from which they received this payment – immediately upon being informed of receiving such an amount.

Split payment

Limitation of the possibility to dispose of funds collected on the VAT account



Credit and
debit of the
account

Funds on the VAT account can be used to a limited extent. The VAT account can be credited with funds or debited for the purposes stipulated in the Act.

The account is credited solely with cash due to:

- payment of the amount of VAT due to sales of goods or services with the use of a wire transfer communication rendered available by the bank;
- payment of the amount of VAT by a taxpayer referred to in Article 103, section 5a* to the benefit of a payer referred to in Article 17a*, with the use of a wire transfer communication;
- transferring funds from other VAT account of the holder of the VAT account kept at the same bank;
- refund of the amount of VAT resulting from the correction invoice issued by the taxpayer with the use of a wire transfer communication;
- refund of output VAT by the Tax Office within 25 days with the use of a wire transfer communication.

The account can be debited solely for the following purposes:

- payment of the amount of tax due to purchasing goods or services to the VAT account, with the use of a wire transfer communication;
- refund of the amount of tax resulting from the correction invoice issued by the taxpayer with the use of a wire transfer communication;

- payment of VAT, additional tax obligation referred to in Article 112b and Article 112c (sanctions), interests due to a default in VAT or interests due to a default in additional tax obligation, to the account of a tax office;
- payment of the amount of VAT by the taxpayer referred to in Article 103, section 5a* to the benefit of the payer referred to in Article 17a*, with the use of a wire transfer communication;
- forwarding an amount corresponding with the VAT amount to the VAT account of the supplier of goods or service provider by a holder of the account, who received payment with the use of a wire transfer communication and is not a supplier of goods or a service provider stipulated in the invoice for which the payment is made, with the use of a wire transfer communication;
- refund with the use of a wire transfer communication irrespectively of the payment received to the VAT account of the account holder from whom such payment was received with the use of a wire transfer communication;
- forwarding funds to other VAT account of the holder of the VAT account kept at the same bank with the use of a wire transfer communication, where the holder has space;
- forwarding funds to the account indicated by the head of the tax office in the information regarding the decision referred to in Article 108b, section 4*;
- forwarding funds to the settlement account of a state budgetary unit, in the case the VAT account is kept for

- a settlement account referred to in Article 196 (for servicing state budget), section 1, point 2 (current account for state budgetary units, with a separation of revenue and expenditure accounts) or 5 (subsidiary accounts) of the Public Finance Act;
- seizure on the grounds of an administrative enforcement document regarding enforcement of accounts receivable due to VAT (solely from VAT enforcement).

The taxpayer being a state budgetary unit is at a disposal of funds collected on VAT accounts kept for settlement accounts referred to in Article 196 (for servicing state budget), section 1, point 2 (current accounts of state budgetary units, with a separation of revenue and expenditure accounts) and 5 (subsidiary accounts) of the Public Finance Act, pursuant to the provisions of this Act.

Cash collected on the VAT account and on the settlement account in the amount corresponding with the amount of VAT indicated in the wire transfer communication is free of seizure on the grounds of a court or administrative enforcement document regarding enforcement or security of accounts receivable other than VAT.

Claims from the VAT account cannot constitute an object of collateral security.

Split payment

What happens with interests collected on the VAT account?



funds collected on the VAT account

In the case of charging interests on funds collected on the VAT account, the bank without a separate disposition of the VAT account holder credits with this amount a settlement account for which a VAT account is kept.



several settlement accounts

In the case the VAT account is kept for several settlement accounts, the bank credits settlement account indicated by the account holder.

Split payment



Advantages of the split payment mechanism

- a lack of additional sanctions of a tax obligation stipulated in the VAT Act - up to the amount corresponding with the tax amount resulting from the received invoice paid with the use of the split payment mechanism;
- excluding the taxpayer from joint and several liability for tax arrears of a supplier in the case of purchasing goods stipulated in annex no. 3 to the VAT Act – up to the amount corresponding with the tax amount resulting from the received invoice paid with the use of the split payment mechanism;
- a lack of using increased interests for default with regard to tax arrears resulting from the provisions of the Tax Ordinance, if arrears occurred with regard to the settlement period for which, in the submitted tax return, an amount of calculated tax has been stipulated, which in at least 95% results from received invoices, which have been paid with the use of the split payment mechanism;
- shorter refund period (25 days as of the settlement submission) of surplus of due VAT, if the entrepreneur decides on the refund to the VAT account;
- if VAT obligation is paid in full in a shorter period than the one stipulated for tax payment and is executed from

the VAT account, then the amount due for payment can be decreased with an amount calculated in compliance with the formula given in the Act:

$$A = O \times R \times \frac{n}{360}$$

- A** – the amount with which the amount of tax obligation due to tax is decreased;
- O** – the amount of the tax obligation due to tax resulting from the tax return before decreasing this obligation;
- R** – reference rate of Narodowy Bank Polski (National Bank of Poland) binding two business days before the day of tax payment;
- n** – number of days as of the day on which the bank account or the account at a credit union was credited, for which a VAT account is kept with an exception of this day, until the day on which the period of tax payment expires, including this day.

The amount with which the amount of tax obligation due to tax is decreased is rounded to full zloty.

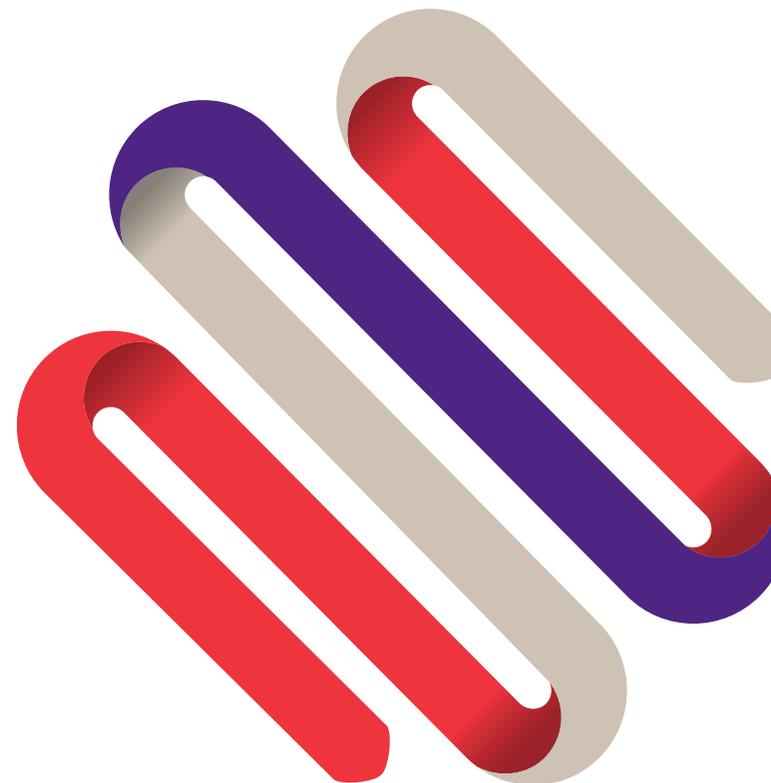
With regard to rounding the amount with which the amount of the tax obligation due to tax is decreased, the provision of Article 63, par. 1 of the Tax Ordinance applies.

Attention!

A lack of application of additional sanctions, exclusion from joint and several liability, a lack of application of increased interests due to default do not concern the taxpayer who knew that the invoice paid with the split payment mechanism:

- had been issued by a non-existent entity;
- stated activities that had not been performed;
- stipulated amounts non-compliant with the reality;
- confirmed activities to which provisions of Article 58* and Article 83* of the Civil Code apply.

Split payment



Amendments to the Accountancy Act

Introduction of the split payment mechanism has also effects in the Accountancy Act.

In annex no. 1, in the part “Additional information and explanations” point 18 has been added in section 1, which concerns the necessity of separate presentation of cash collected on the VAT account.

The necessity of separate presentation of cash collected on the VAT account.

Split payment

New VAT return forms as of 01.07.2018

Together with the implementation of the split payment new return forms shall be introduced: VAT-7, VAT-7K, VAT-8, VAT-9M, VAT-12, which are to be used as of the settlement for July and with regard to VAT-7K – as of the third quarter.

Currently binding VAT-12 templates can be used no longer than with regard to the settlement for December 2018.



Split payment

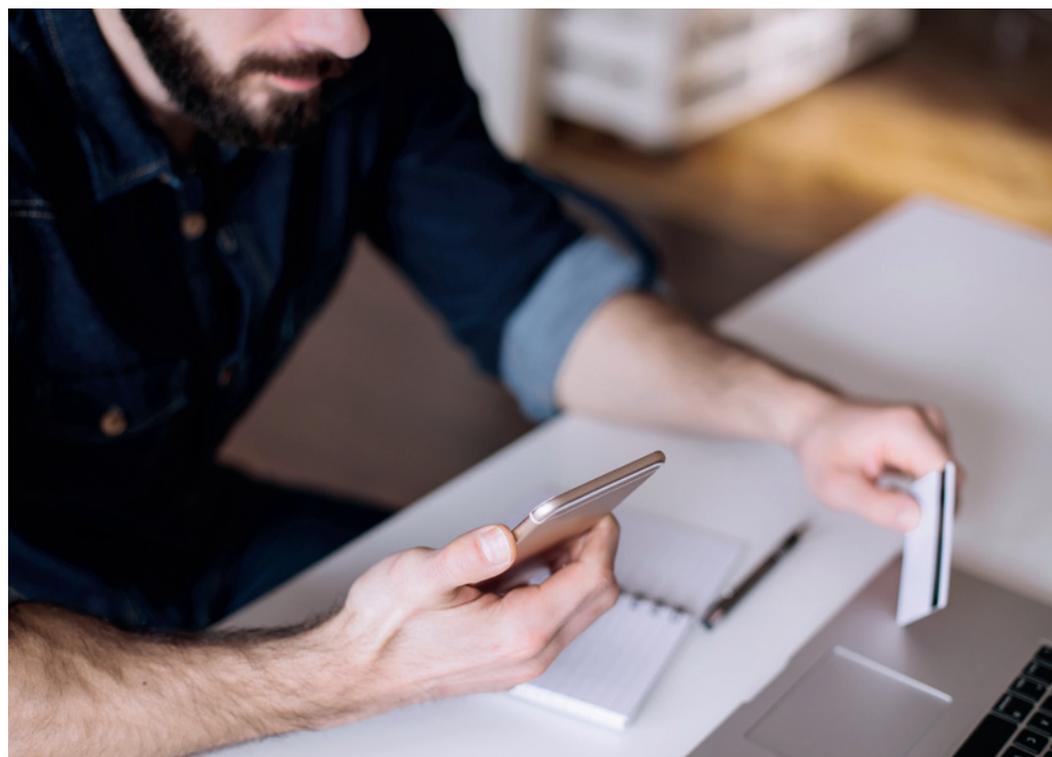


Adjustment of IT systems for the purposes of meeting split payment requirements

Amendments to financial and accounting systems shall be necessary so that it is possible to settle transactions paid via the split payment mechanism. The first step comprises adjusting IT systems by banks so that taxpayers could easily benefit from amendments and pay invoices through the agency of a wire transfer communication dedicated to the split payment mechanism.

Accounting systems should be also adjusted to the changes introduced by banks. In the case of accounting bank statements and invoices by e.g. adding functionalities in systems of marking contractors with whom we shall make settlements with the use of the split payment mechanism. Such functionality shall allow automated accounting allocation of the obligation resulting from an invoice so that it is adjusted to executing parcels of wire transfers ready to be imported to the bank system.

Our accounting systems ensure such solution of automated accounting and are adjusted to establishing parcels of wire transfers with marking the payment via dedicated wire transfer communication.



Split payment

Sources:

The VAT Act

*Article 103, section 5a

in the case of intra-Community acquisition of engine fuels enumerated in annex no. 2 to the Act of 6 December 2008 on excise duty, production or trade of which requires obtaining a licence in compliance with the provisions of the Act of 10 April 1997 - the Energy Law, the taxpayer is obliged, without a call of the Head of the Tax Office, to calculate and pay amounts of the tax to the account of the Tax Office relevant for payments of excise duty [...]

*Article 17a

the payer of the tax on the intra-Community acquisition of goods referred to in Article 103, section 5a, points 1 and 2, is a properly registered recipient or a tax warehouse keeper, performing to the benefit of the entity referred to in Article 48, section 9 or Article 59, section 8 of the Act of 6 December 2008 on Excise Duty, the intra-Community acquisition pursuant to the provisions on excise duty.

*Article 108b

section 1 – on the taxpayer's application, the Head of the Tax Office gives a consent, by way of a decision, to forward funds collected on the VAT account indicated

by the taxpayer, to the bank account or the account at the credit union indicated by them, for which the VAT account is kept.

section 2 – in the application, the taxpayer stipulates the amount of funds collected on the VAT account, which is to be transferred.

section 3 – the Head of the Tax Office issues a decision within 60 days as of the day of receiving the application. In the decision the Head of the Tax Office stipulates the amount of funds to be transferred.

section 4 – the Head of the Tax Office forwards via the ICT system or via means of electronic communication, the information on the decision referred to in section 1, to the bank or to the credit union, which keep the VAT account indicated in the application. The information includes data necessary to execute the decision, including:

- 1) number of the VAT account referred to in section 1;
- 2) number of the bank account or the account at the credit union referred to in section 1;
- 3) the amount of funds referred to in section 3.

The Civil Code

*Article 58

§ 1. Legal transaction non-compliant with the Act or aimed at evading the Act is invalid, unless a relevant provision stipulates other consequences, in particular, the one that invalid provisions of the legal transaction are replaced with relevant provisions of the Act. **§ 2.** A legal transaction non-compliant with the principles of social coexistence is invalid. **§ 3.** If invalidity concerns solely a part of a legal transaction, the transaction remains binding with regard to other parts, unless it is evident from the circumstances that the transaction would not have been executed without the invalid provisions.

**Article 83

§ 1. Declaration of will ostensibly made to the other party with their consent is invalid. If such a declaration has been made in order to conceal other legal transaction, the validity of declaration is assessed in compliance with the attributes of such transaction. **§ 2.** An ostensible character of the declaration of will does not influence the effectiveness of payable legal transaction made on the grounds of an ostensible declaration, if, as a result of such a transaction, a third party acquires the right or is released from the obligation, unless they acted in bad faith.

If you are interested in finding out more information about the Split payment mechanism, please contact us directly.

In Grant Thornton for over 20 years we have been assisting our Clients in automating accounting processes by providing outsourcing services. We hope that the solutions implemented by us shall contribute to effectively processing changes presented herein.



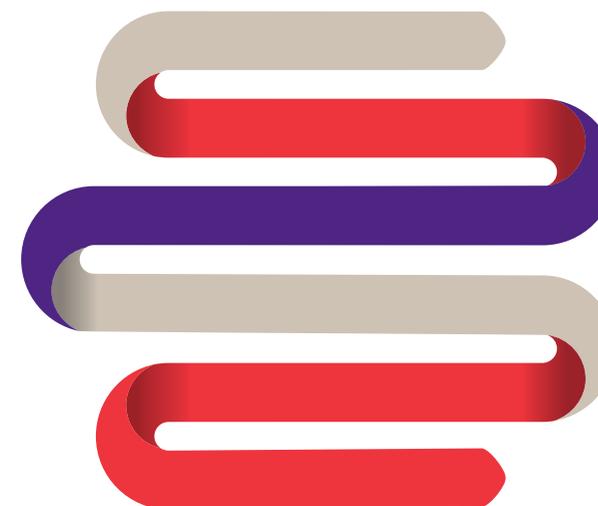
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