

Social security contributions of self-employed managers

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Introduction

Social security contributions in Poland are significant, particularly in the case of highly paid managers. As a result, it is common practice for managers to perform their duties as self-employed persons (ie, registered entrepreneurs) under so-called management contracts.

Self-employed persons pay their own social security contributions, unlike unregistered freelancers, civil contractors and employees, for whom the employer or recipient of the service pays the applicable contribution. Registered entrepreneurs can voluntarily declare the amounts on which their social security contributions are based, which do not have to correspond to their actual income. A minimum amount is prescribed by law and this is usually declared. In practice, registered entrepreneurs pay substantially lower social security contributions than similarly remunerated employees or civil law contractors, who must pay contributions based on their income.

Evolution of case law

The Social Security Agency has consistently opposed this structure for the past 13 years. It has claimed that a management contract and the actual income received by self-employed managers should constitute a basis for their social security contributions. However, in general, the lower courts and the Supreme Court have rejected this argument and supported the standpoint that self-employment rather than a management contract constitutes the legal basis for calculating social security contributions.

However, the direction of previous case law was reversed on June 17 2015, when the Supreme Court ruled that if a manager registered as self-employed executes a management contract with a company in which he or she is a board member, it is the contract and not the status of being self-employed that constitutes the legal basis for calculating social security contributions (III UZP 2/15). The decision established a legal principle under which members of a management board cannot enjoy the favourable social security benefits available to self-employed persons (for further details please see "[New approach to social security contributions on management fees](#)"). The decision concerned members of a management board, but the execution of management contracts with non-management board members as self-employed persons has also become a risky action.

In a March 29 2017 ruling, the Supreme Court confirmed that managers who are not management board members may perform management contracts as self-employed persons and that their business activity constitutes a basis for their social security insurance contributions (I UK 116/16).

Facts

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The manager had been hired by a limited liability company under a management contract to oversee part of the company's business within his business activity (ie, as a self-employed person). The manager was added to the register of entrepreneurs shortly before the execution of his management contract. He did not seek any other clients and performed only that one contract as his business activity. The management contract provided for certain limitations regarding the manager's freedom of business activity (ie, company consent was required to conduct business activity for another entity or to change the scope of his business activities, the company could provide instructions to the manager and the company had to perform certain fiscal obligations on the manager's behalf).

The Social Security Agency found that the manager was subject to social security contributions based on his management contract (agency agreement) and not his self-employed status. On appeal, the regional court overturned the decision and ruled in the company's favour. The Social Security Agency's subsequent appeal against the regional court decision resulted in another change of ruling, which was again unfavourable for the company. The company filed a cassation with the Supreme Court.

Decision

The Supreme Court ruled that a management contract can be executed within a manager's business activity and therefore constitutes a legal basis for calculating social security contributions. However, a clear distinction must be made between management and non-management board members. A management board member acts on behalf of a company and his or her actions can have a direct impact on a company's rights and obligations. On the contrary, a non-management board member manager acts in his or her own name and on his or her own account.

Article 20 of the Constitution sets out a principle of freedom for business activity, which can be limited only by statute. The regulations on business activity do not prevent the execution of management contracts by self-employed persons and the performance of a business activity does not exclude the performance of a service agreement for one entity or the personal rendering of services by self-employed persons. Further, the contractual provisions that limit the freedom of a self-employed manager's decisions do not undermine the actual performance of the relevant business activity. Similar conclusions were confirmed on May 24 2017 in another Supreme Court decision (I UK 247/16). Further, a management contract can be viewed as a due diligence agreement (similar to a mandate agreement). Hence, a company (mandator) can provide some instructions or guidelines to a manager (contractor).

Comment

The Supreme Court decisions confirm that management contracts can still be performed by self-employed managers and that business activity constitutes a basis for social security contributions if the manager is not a management board member. However, the Social Security Agency's standpoint is expected to remain unchanged and companies may still encounter unfavourable decisions. Although there are quite clear reasons to expect positive court decisions when appealing Social Security Agency decisions, this route can hardly be recommended, as it incurs the risk of a multi-year litigation.

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