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TOPICS

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A BOARD MEMBER DELEGATED FROM A GERMAN COMPANY TO POLAND REMUNERATED ON THE BASIS OF AN EMPLOYMENT CONTRACT WITH A GERMAN ENTITY, WILL PAY 20% TAX IN POLAND

Katarzyna Serwińska
Tax Advisor

According to an individual tax interpretation of the Director of the National Tax Information Office of 22 April 2025 (ref. 0115-KDIT1.4011.176.2025.1.MR), the remuneration of a management board member who is: (i) a German tax resident, (ii) delegated to perform functions in a Polish company on the basis of an employment relationship with a German entity, and (iii) remunerated exclusively on the basis of this contract, is subject to a flat rate of 20% tax in Poland.

The fact that this income is subject to taxation in Poland does not raise any doubts as the nature of the activities performed determines the place of taxation. It is irrelevant that the formal employer is a German company and the remuneration is paid outside of Poland. Under Article 16(1) of the double taxation treaty between Poland and Germany, salaries of members of the management board may be taxed in the country where the company has its registered office – in this case, Poland.

What is surprising, however, is the qualification of this remuneration as income from activity pursued personally (Article 13(7) of the PIT Act) and, consequently, the application of a flat tax rate. In similar cases, where members of the management board perform this function on the basis of an employment contract with a Polish entity, their income is treated as income from an employment relationship and taxed progressively.

It should be borne in mind that, in the described situation, the duty to settle and pay the tax is on the board member as there is no tax remitter in Poland.

OBLIGATION TO PROVIDE JOB CANDIDATES WITH SALARY INFORMATION AND USE OF GENDER-NEUTRAL JOB POSITIONS HAS ALREADY BEEN PASSED BY PARLIAMENT

Natalia Kryżankiewicz
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The bill, which passed on 9 May, introduces the obligation on employers to provide candidates with information on their starting salary (or a range thereof). They must also provide relevant information on the provisions of a Collective Bargaining Agreement or the remuneration regulations applicable to the position. This information can be included in the job advertisement or later, but must be sufficiently in advance to allow candidates to negotiate in an informed and transparent manner. It can be provided in writing or electronically (oral information will be insufficient).

There will also be an obligation to use gender-neutral job titles. This will result in companies having to specify gender-neutral names for all positions in the organisation.

Employers much not ask candidates about their salaries in previous jobs.

We do not yet know when the law will enter into force. We are waiting for the further course of the legislative process. However, in the current wording of the bill the legislator has provided for a relatively long vacatio legis whereby the law enters into force six months after its publication in the Journal of Laws. The changes will probably become a reality later this year.

The draft only concerns the recruitment stage, so it is not a comprehensive implementation of the Remuneration Transparency Directive. The missing legal issues (e.g. employees' right to information, the criteria used to determine salaries, the pay gap) will be covered by a separate law, which the Ministry of Family, Labour and Social Policy is working on.

THE OFFENCE OF ENTRUSTING ILLEGAL WORK TO A FOREIGNER IS COMMITTED BY THE PERSON WHO ACTUALLY DIRECTS THE EMPLOYEE AND NOT BY THE ONE WHO SUBMITS THE PAPERWORK TO THE OFFICE

Damian Tokarczyk, PhD
Advocate

This verdict was recently issued by one of the courts in a case we conducted. During an inspection, the Border Guard revealed that several foreigners had been entrusted with work at a lower level than declared in the declarations on entrusting work/work permits. The Act on the Promotion of Employment and Labour Market Institutions recognises this as entrusting illegal work and as an offence.

The Border Guard's practice – do not look deep

The Border Guard considered that the proxy obtaining the permits or making the statements on behalf of the employer was at fault. It did not matter that the proxy was not supervising the foreigners' work afterwards, did not delegate tasks to them and did not account for their working time. All that mattered was that they signed documents legalising work that was later not performed in accordance with those documents.

Having a foreigner work at a lower level than declared is an offence punishable by a fine from PLN 1,000 to PLN 30,000 (Article 120(1) of the Act on Promotion of Employment and Labour Market Institutions).

The court's position – the employer's structure must be analysed

The court disagreed with the Border Guard's approach. It ruled that the prosecutor must examine the organisational structure of the employer and determine who actually entrusts the foreigners with work. Entrusting work does not consist of mere employment, it involves commissioning specific tasks, accounting for work, issuing ongoing instructions, etc. A proxy who is only responsible for the initial employment of the foreigner, but does not subsequently direct the work, is not considered as entrusting the foreigner with work. Therefore, they cannot be liable for an offence under section 120(1) of the act.

This important position by the court can also be applied in other misdemeanour cases (e.g. under Articles 281-283 of the Labour Code). The authorities who have the right to impose fines and submit motions to the courts for punishment (Border Guard, PIP) usually accuse individuals at the top of the structure with whom they are in contact during inspections. In doing so, they forget that a fine or a request for punishment are not elements of an administrative procedure, but of a criminal one. Responsibility for an offence is personal and individual – it is not the responsibility of an official representative of the employer. It always has to be proven that a particular person's behaviour bears the elements of an offence.

A DRAFT AMENDMENT TO THE BENEFITS ACT ALLOWS FOR “INCIDENTAL” WORK DURING SICK LEAVE

Paulina Zawadzka-Filipczyk
Attorney-at-law

Working for pay while on sick leave risks losing the right to benefits. It is usually assumed in case law that undertaking sporadic activity forced by circumstances does not violate the law, but the legislation does not currently provide for any exceptions.

According to a draft amendment to the Act on Cash Benefits from Social Insurance in the Case of Sickness and Maternity, gainful employment during sick leave will continue to be prohibited, but there will be an exception for “incidental activities” which have to be undertaken during a lay-off due to relevant circumstances. Relevant circumstances do not, however, include an instruction to perform tasks by the employer. The regulations do not specify how the incidental nature of such permitted work activity is to be understood. Each case will therefore require individual assessment.

Other significant changes concern employees working for multiple employers simultaneously. Such individuals will entitled to sick leave for only one workplace. The only condition for obtaining this leave will be that the nature of the illness does not prevent them from working elsewhere. Thus, if a doctor raises no objections due to the nature of the work, the employee may be on sick leave with one employer while continuing to work for another at the same time.

The new rules are to come into force on 1 January 2026. They will have to be taken into account when checking the correct use of sick leave.

ACCORDING TO THE PRESIDENT OF THE PERSONAL DATA PROTECTION OFFICE (UODO), IT IS STILL NOT PERMITTED TO PUT OWN REMARKS ON REFERRALS FOR MEDICAL EXAMINATIONS

Michalina Kaczmarczyk
Attorney-at-law

According to the President of UODO, putting information on a referral for a medical examination about the reason for the inability to work, e.g. "bad mental state" or a mention of a release from a psychiatrist, constitutes a violation of data protection regulations. The President of UODO indicates that the employer should not include any information on the referral other than that resulting from the standard template.

It is difficult to agree with such a strict position.

For a proper assessment of an employee's fitness for work by an occupational physician, it may be crucial to have information about the relevant circumstances that led to the referral for examination (especially after a long absence). The occupational physician does not usually have access to the employee's full medical records, including information about the reason for the sick leave.

The position of the President of UODO, although dictated by the intention of data protection, ignores the practical aspects of occupational medicine and safety. Not being able to signal to the occupational physician the circumstances relevant to the assessment of fitness for work (especially those that prompted the employer to refer the employee for a medical check-up) can lead to risky situations for both the employee and the employer.

B2B CONTRACTS WITH ONE'S EMPLOYER ARE SUBJECT TO SOCIAL INSURANCE CONTRIBUTIONS AS IF IT WERE AN EMPLOYMENT CONTRACT

Tomasz Kret
Senior Lawyer

If an employee also has a B2B contract with his employer, i.e. within the framework of business activity, the remuneration from this contract is subject to taxation as if it were an employment contract (decision of the Supreme Court of 18 March 2025; ref. III USK 88/24).

Parallel agreements with one's own employer are governed by Article 8(2a) of the Social Insurance System Act: a person performing work on the basis of an agency agreement, contract of mandate or other contract for the provision of services or contract for specific work is treated as an employee.

In the opinion of the Supreme Court, this provision is also applicable when work for the employer is performed as part of economic activity.

Consequently, there is no overlap of social insurance titles for the entrepreneur. The entire income obtained from the employment contract and the provision of services is therefore treated as income from an employment relationship. This also means that the employer is responsible for paying the social insurance contributions.

If ZUS issues a decision establishing that the employer is the remitter of contributions on the person's income, it should – ex officio – credit the contributions unduly paid by the person themselves towards the employer's receivables.

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