

**HIGHER SOCIAL SECURITY CONTRIBUTIONS
ON REMUNERATION OF SELF-EMPLOYED EXECUTIVE BOARD MEMBERS**

We wish to alert you to a ground-breaking resolution of the Supreme Court ("SC") adopted on 17 June 2015 by a bench of seven justices (case no. III UZP 2/15). The court resolved a years-old dispute about the proper social security treatment of the remuneration received by a member of the management board of a company if this member has entered into an executive contract with the company as a self-employed person.

A supporting statement for the resolution was published on 21 August 2015.

According to SC:

- a management board member is authorised to manage his company not by way of his executive contract but merely by reason of his appointment to the board;
- thus, where a board member has an executive contract with his company into which he entered as a self-employed person (e.g. in course of his management business), his performance of this contract cannot be part of his business designated as management;
- if the board member's only business income is from his executive contract, then his social security eligibility comes not from his business but from his executive contract, which for social security purposes should be treated as a contract for services (*umowa zlecenia*);
- in such a case, social security contributions should be assessed on the actual remuneration agreed in the executive contract (without preferences otherwise available for sole traders) and should be remitted to ZUS by the company as a remitting agent.

SC's resolution has the force of a rule of law and is applicable as of its date.

ZUS may rely on the resolution to enforce overdue social security contributions (plus interest) from companies as remitting agents. Admittedly, as of 1 January 2012, claims for social security contributions become limited after 5 years (as opposed to the earlier period of 10 years). But the interim provisions which introduced that change allow ZUS to enforce overdue contributions for periods going as far back as 2005.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

Doradztwo Podatkowe WTS&SAJA Sp. z o.o.

Delta Building, 4th floor
ul. Towarowa 35
61-896 Poznań
tel. (+48) 61 643 45 50
fax. (+48) 61 643 45 51

Warsaw Office

CENTRAL Tower, 22nd floor
Al. Jerozolimskie 81
02-001 Warszawa

This Newsletter provides general information and is designed to keep you up-to-date with changes in tax law, tax rulings and interpretations, case law development and interesting commentaries.

Doradztwo Podatkowe WTS&SAJA shall not be held legally liable for any acts or omissions that follow from the contents hereof.