



# Tax Alert |

## Polish Deal - mandatory health insurance coverage for Board Members

KPMG in Poland

November 2021

On 23 November 2021, the Act amending the Personal Income Tax Act, the Corporate Income Tax Act, and certain other acts, containing an amendment package provided for under the Polish Deal Program, was published in the Journal of Laws.

The Act extends the mandatory health insurance contribution scheme to individuals receiving remuneration for performing functions under the act of appointment. The emergence of a new obligation to pay health insurance contributions is likely to further complicate social security settlements for this group of insured.

**If in your organization the members of the management board or proxies receive remuneration under a resolution and, at the same time, are professionally active outside Poland, we encourage you to read the information below.**

### What will change?

The amendment consists in extending the list of entities subject to mandatory health insurance coverage in Poland provided by the Act on healthcare services financed from public funds with a new category of entities, i.e., individuals performing their functions under the act of appointment. Up to now, such individuals were not covered by the mandatory social security and health insurance.

The amendment stipulates, however, that every individual pursuing professional activities simultaneously outside Poland can now be covered by the provisions of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. Importantly, a situation where an individual is registered for social security purposes in at least two different states is non-compliant with the Regulation no. 883/2004, one of the guiding principles of which is to subject persons moving within the Community to the social security scheme of only one single Member State.

Consequently, it seems of importance to thoroughly examine social security insurance provisions applicable to individuals performing their duties under the act of appointment, including board members, starting from 1 January 2022. In many cases, individuals seating in the boards of Polish companies are at the same time employed by foreign entities, e.g., under employment contracts.

The Regulation no. 883/2004 provides for three key factors which allow to identify which regulatory framework should prevail, namely:

- place of residence;
- place of the employer's registered office;
- period worked or salary and country in which the work was performed.

A complex analysis of the above-indicated factors makes it possible to assess whether a board member should be subject to the social security legislation of the country of residence or whether the place of registered office of an employer or one of employers shall prevail.

Depending on the specific situation, it may be necessary to pay Polish social security contributions on a foreign employment contract or vice versa - remuneration for performing a function in the management board of a Polish company may be subject to compulsory social insurance in another country.

## **Who will be affected?**

The amendment relates to individuals who perform their duties under the act of appointment, on account of which they receive remuneration.

This category encompasses, inter alia, board members and proxies who do not receive remuneration under employment contract or other legal title but based on the act of appointment.

## > What actions should be taken?

Companies will be obliged to verify whether the members of their boards are eligible for mandatory health insurance contributions in line with the Regulation 883/2004 and, should such an obligation arise, to register these individuals for insurance purposes and remit monthly social insurance premiums.

## > How will it affect business operations?

The discussed amendments will have no direct effect on the conducted business operations, yet they are to introduce new rules for remunerating individuals performing their functions under acts of appointment.

Because of the mandatory health insurance coverage, starting from January 2022, remuneration earned by such individuals will be deducted by a 9 percent health insurance premium, which may be associated with their expectations regarding pay compensation. In some cases, it may be necessary to register foreign entities as contribution remitters in Poland or to pay social security contributions in Poland also under other legal titles.

## > How can we assist you?

Particular attention must be paid to changes in terms of insurance coverage for individuals performing their duties under acts of appointment, applicable as of 1 January 2022.

The vast array of services offered by KPMG in this regard includes:

- performing analysis of the existing model of remuneration of individuals impacted by the amendments, together with the presentation of alternative remuneration models that can be introduced instead;
- performing analysis of the situation of members of the management board and other persons covered by the amendment and determining which social security legislation they should be covered with. In cases where the Polish social security scheme prevails - preparing an application to the Polish Social Security Administration for the status confirmation and issuance of the A1 certificate;
- preparing recommendations as to the changes in the employment structures in situations where shifting to another social security framework would not be desirable;
- registering foreign entities as social security contribution remitters in Poland and handling settlements with the Polish Social Security Administration.

If you would like to learn more about the issues discussed, please do not hesitate to contact us.

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