



Opinion of the Ministry of Finance regarding the obligation of payment for personal income tax and mandatory social security contributions in case the director does not receive remuneration

Tax Alert

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On 11 June 2018, the Ministry of Finance issued Opinion no. 011-00-1137/2018-04 stating that there is an obligation to pay personal income tax and mandatory social security contributions, in cases of concluding a contract on the rights and obligations of the director (without establishing an employment relationship), when such person-director, who is not the founder or member of the company, as it is stated, does not receive any remuneration for his/her work.

In this opinion, the Ministry of Finance first asserts the position of the Ministry of Labor, Employment, Veterans' and Social Affairs, stated in the opinion number: 011-00-406/2018-02 of 24 May 2018, which specifies that the amount of compensation for the work of a director is **the obligatory element** of the contract on mutual rights, obligations and responsibilities of the director, who does not establish an employment relationship with the legal entity.

Based on the provisions of the Labor Law, which stipulate that a person who performs the duties of a director has the right for remuneration related to work and other rights, obligations and responsibilities in accordance with the contract, the Ministry of Finance concludes that in accordance with this, there is also the obligation to charge and pay personal income tax and related mandatory social security contributions on the contractual remuneration for work performed.

Furthermore, the opinion states that the base for calculating the tax on other income and mandatory social security contributions, in the situation when a director waves the right to contractual remuneration, represents "**contracted compensation equivalent to – adequate remuneration for the director's work**, reduced by 20% of the lump sum deductible costs.

It follows from the above that the obligation to pay personal income tax exists even when there is no payment of remuneration. It is questionable how much this interpretation is based on the existing provisions of the Law on Personal Income Tax. Furthermore, the question that arises is what the adequate compensation is and what the basis for its determination is. In addition, the issue is also the moment when the tax obligation on "adequate" income arises. KPMG can provide assistance in regard director engagement of a company or companies and the related tax implications.

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