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## LIQUIDATION OF THE SO-CALLED THRESHOLD OF CONTRIBUTIONS FOR PENSION AND DISABILITY INSURANCE

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The information on the website of the Constitutional Tribunal indicate that Tribunal cancelled the hearing planned for 10<sup>th</sup> of July 2018, on which the president's application to examine the compatibility of the Act of 15<sup>th</sup> of December 2017 on the amendment of the Act on Social Security System and certain other acts was to be examined. This Act abolishes from 1<sup>st</sup> of January 2019, the limit in paying contributions for pension and disability insurance, The Tribunal has not yet set a new hearing date. Please be reminded that shall the above mentioned Act come into force beginning from 1<sup>st</sup> of January 2019, **shall cease to be effective, binding on this moment, the principle of limiting the annual basis for calculating contributions for pension and disability insurance. Current limit is 30 times the forecasted average remuneration in the economy for a given year.** In 2018 this limit is 133 290 PLN. The amendment will cause that in the case of an employee currently earning 20,000 PLN gross per month, the costs of employer's related to employing such an employee will increase by approx. 7% ( approx. 17 000 PLN per year) and the employee's income will decrease by approx. 3% (by approx. 8,000 PLN per year). That is way **many companies is already reviewing the models of management remuneration they use and considering implementation of some amendments.** From solutions that can be applied we can enumerate the division of remuneration, in the case of persons holding the position of members of the Management Board, for remuneration due for the work (the employment relationship) and remuneration due for being a member of the Management Board established by the resolution of the company's body that appoints the management board. Of course, in the abovementioned case, it is necessary to ensure an appropriate division of tasks and responsibilities assigned to each of the abovementioned relationships, which shall be reflected in the provisions of the employment agreement and the content of the resolution. Another solution, that can be taken into consideration, but this time also for employees who are not members of the Management Board, is employment based on a managerial contract in connection with running a business activity by a given person.

Helpful in planned optimization – both members of the Management Board and persons who are not a members of the Management Board - are the standpoints presented by the Supreme Court. And so in the resolution of 7 judges from 17<sup>th</sup> of June 2015 (case no. III UZP 2/15), having the force of a legal principle, the Supreme Court stated **in relation to the members of the Management Board** that the title to be covered by a social insurance for the members of the Management Board, who concluded agreement on the provision of management services with a Company as a part of their non-agricultural business activity, is this contract for the provision of services, and not running this business activity. Thus, a member of the Management Board, being in the above mentioned situation, must reckon with the obligation to pay the mentioned full ZUS contributions, although he runs a business activity.

The situation of persons who are not members of the Management Board is different. In the judgment of 9<sup>th</sup> of March 2017 (case no. I UK 116/16), concerning persons from the outside of the Management Board, the Supreme Court stated that acceptable is the conclusion of the so-called managerial contract as part of a business activity, in which case the title to be covered by a social security by a manager is running this activity (Article 6 sec. 1 point 5 of the Act on Social Security System), which so-called the absolute insurance title "precedes and absorbs the performance of the managerial contract".

Should you have further questions, we remain at your disposal.

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