

New social security regime - Guidelines in relation to the social security of freelancers who are engaged from up to 2 clients.

Paragraph 9 of article 39 of Law 4387/2016 provides that freelancers, who are paid by means of invoices for the provision of services and whose income derives from their engagement by one or two persons (individuals or legal entities), are subject to the proportionate application of the provisions for employees regarding the amount, the calculation method as well as the liable person for the payment of the contributions.

In the above basis, on 20.01.2017 circular no. Φ.80000/οικ. 2460/106/2017 was issued by the Ministry of Labour for the provision of guidance regarding the implementation of said provision and the insurance of the aforementioned persons. According to said circular, the following are provided:

- Said provision applies to freelancers, who are subject or would have been subject, upon entry into force of the new social security law, to insurance with O.A.E.E. and E.T.A.A. in accordance with the statutory provisions of said funds, as they were in force before their integration into E.F.K.A., and who (the freelancers) are paid by means of invoices for the provision of services ("DPY"), and provided that their income derives from the performance of continuous - and not occasional - professional activity, and only for their occupation by one or two persons (individuals and legal entities).
- The relevant circular provides that said provision does not apply to (a) the partners and the external associates of law firms (without clarifying whether this refers solely to lawyers or to other types of external associates as well), who are subject to that payment of contributions as freelancers, even if the above conditions are met, (b) the insured individuals who provide the same services to one employer, by receiving a part of their remuneration through payroll and another part through DPY, in which case the total remuneration should be subject to contributions applicable for employees, as well as (c) the insured individuals who are occupied in one employer under an employment contract and provide services to another counterparty through DPY, in which case the provisions for multiple activities (i.e. parallel insurance) will apply.
- Based on the content of the circular, it appears that the issuance time as well as the number of DPYs issued by any freelancer will not be taken into consideration, but the social security contributions (both for the employer and the employee) will be due on the total agreed fees divided by months of cooperation. For the above cases, the maximum threshold of remuneration subject to contributions (5.860,80 Euros monthly), will be monitored in connection with the duration of the contract between the parties (i.e. allocation of the total agreed fee on a months' basis), whilst in case the monthly amount which derives is less than the minimum monthly calculational basis applying to freelancers (586,08 Euros), then the insured individual will pay, for the remaining amount, the applicable contributions as a freelancer (i.e. without the participation of the employer/client).
- On the above income, the contributions will be calculated at 20% for the pension sector, allocated to 6,67% for the insured individual and 13,33% for the counterparty (client). Contributions for the health care sector will be allocated accordingly, as well as the contributions for auxiliary insurance and lump-sum payments, for the categories of insured individuals who are subject to mandatory insurance for said sectors due to their capacity (e.g. engineers of former E.T.A.A.-T.S.M.E.D.E. who are subject to mandatory auxiliary insurance, contrary to accountants and other freelancers of former O.A.E.E.)
- On the basis of the circular, it appears that the subjection of freelancers to the relevant provisions will not be monitored by the competent bodies of E.F.K.A., but in case where any freelancer wishes to be subjected to the relevant provisions, then relevant reference should be made to the DPY issued towards the freelancer's counterparty, i.e. that the freelancer qualifies in order to be subject to the concerned

provisions. Accordingly, and up to the end of the relevant calendar month, the respective counterparty is obliged to submit for the freelancer who is subject to the above provision, an Analytical Periodical Statement (“APD”), proceeding to the allocation of the agreed fee per month, based on the duration of the contract.

- In case the counterparty does not submit an APD, a specific process before the competent bodies of E.F.K.A. is provided, for the settlement of the relevant dispute, which, as it appears, will be initiated in any dispute between the freelancer and the client, e.g. for interpretation issues as to the relationship between the parties being classified as an occasional activity or not, taking into consideration that the circular does not further clarify this issue. Until the settlement of the dispute, the contributions of the insured individual on the basis of freelancers.
- If during the calendar year the conditions for the subjection to the relevant provisions are not met (e.g. provision of services to a third counterparty as well, termination of cooperation), the insured individuals will pay their contributions as regular freelancers, whilst they should notify this fact to E.F.K.A. (through a relevant application-statement), so as the relevant amendment to be reflected to the registry and the concerned counterparty (or counterparties) to be informed, in order to be exempted from the obligation of the payment of contributions as an employer.
- Finally, the circular mentions that as counterparty is considered one or more legal entities, which are connected with a common business activity, regardless of the legal type of its exercise. Specifically, it is mentioned that the common business activity consists in the common economic objective pursued by the counterparty through any kind of legal form of activities, and is a result of the factual elements of each case (e.g. different enterprises belong to the same person or/and operate in the same premises, with the same mechanical equipment etc.).

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