

Law 4387/2016 – Guidelines in relation to pending matters of social security law as regards freelancers and special categories of employees.

Since the date of publication of the new social security law 4387/2016 (on 12.05.2016), the issuance of relevant clarifications has been already anticipated regarding the insurance and the corresponding contributions, both in relation to freelancers and particular categories of insured individuals, for whom subjection to social security as employees is henceforth provided, on the basis of relevant legislative provisions.

On such basis, the Ministry of Labour issued on 30.12.2016, the following circulars: (a) Φ.80000/οικ.61689/2215/2016 (Guidelines for the implementation of the provisions of par. 3 of article 38 and of par. 5 of article 40 of L. 4387/2016), as said circular has been correctly re-issued, and (b) Φ.80000/οικ.61327/1484/ 2016 (Determination of the social security contributions of freelancers, self-employed and farmers from 1/1/2017 – Implementation of the provisions of articles 39, 40 and 98 of L. 4387/2016), which mainly provide the following clarifications:

A. Special Categories of Employed Staff

- In accordance with the provisions of the relevant circulars, the payment of contributions as employees for the pension sector applies, inter alia, to the following individuals:
 - Individuals who are appointed as members of the Board of Directors of an S.A. and receive remuneration or compensation of any kind for said capacity (i.e. as BoD members), are subject to the payment, as of 01.01.2017, of contributions for the pension sector amounting at 20%, which is allocated to 6,67% for the insured individual and 13,33 % for the employer, and is calculated on the lump-sum remuneration.

Based on the provided clarifications, if the abovementioned remuneration is paid once per year, it is divided by 12 and is allocated to each month, whereas the corresponding social security contributions are paid upon the monthly amounts that derive. It has been further clarified that if the above individuals do not receive remuneration or compensation of any kind by reason of their participation as BoD members of an S.A., there is no obligation for the payment of social security contributions.

Finally, and regarding the jointly-collected (by the former I.K.A.-E.T.A.M.) unemployment sectors (O.A.E.D. - L.A.E.K., O.A.E.D. - L.ΠΕ.ΑΕ) O.E.K. and O.E.E. (Social/employment housing etc.), it is provided that there is no obligation for the payment of the corresponding contributions by the aforesaid individuals, given that their remuneration/compensation derived from their participation as BoD members, does not result from an employment contract.

- Lawyers engaged under paid mandate (regardless of the time of their subjection to social security) for the income deriving from the continuous relationship of services provision, are, similarly, subject to the payment, as of 01.01.2017, of contributions for the pension sector amounting at 20%, which is allocated to 6,67% for the insured individual and 13,33 % for the employer/principal.

It is further clarified that, as of 01.01.2017, the payment of the monthly employer's contribution of 3% on the remuneration of said lawyers (which were provided by article 13 of Law 1512/1985) is abolished.

It is noted that, based on the relevant circular, as it has been correctly re-issued, lawyers engaged under paid mandate appear to be exempted from the obligation of the payment of

contributions in favor of the jointly-collected (by the former I.K.A.-E.T.A.M.) unemployment sectors (O.A.E.D. - L.A.E.K., O.A.E.D. - L.ΠΕ.ΑΕ) O.E.K. and O.E.E. (Social/employment housing etc.), as in the case of the BoD members.

- It is also clarified that both of the abovementioned categories of insured individuals, will be also subject to the payment, apart from contributions for the pension sector, of contributions for health care (allocated to 2,55% for the employed individual and 4,55% for the employer), as well as for auxiliary social security (allocated to 3,5% for the employed individual and 3,5% for the employer), calculated on the salaries of the employees. It is noted, however, that the relevant circular does not make any reference to the insurance of the particular individuals for the sector of lump-sum benefits (which amounts at 4%); an issue that requires further clarifications.
- Further, it is not explicitly clarified by the circular whether the abovementioned individuals will be subject to the minimum monthly calculation basis of the contributions, which has been recently introduced for employees on full-time employment (article 27 of L. 4445/2016), which is determined on the basis of the amount corresponding to the minimum basic salary of an unmarried employee above 25 years old (namely 586,08 Euros per month).

B. Issues regarding freelancers

- On the basis of the relevant circular, for the determination of the monthly income on which the applicable social security contributions for freelancers will be calculated, it is taken into consideration the net taxable income which has derived from the exercise of the professional activity due to which subjection to social security with E.F.K.A. arises, during the previous fiscal year, as such income is defined according to the provisions of Income Tax Code, allocated over a 12-month basis. Therefore, for the social security contributions of 2017, the income obtained by the insured individual during the year 2016, will be taken into account.
- Until the income gained during the previous fiscal year has been rendered final and may be utilized, it is provided that the calculation basis of any kind of social security contributions will derive from the most recently cleared fiscal year. In this regard, the calculation of the contributions for 2017 is anticipated to take place on the basis of the final income of 2015, while at the time upon which the income of year 2016 will be rendered final, the necessary offsetting will take place.
- Especially for individuals, who acquire the capacity or initiate business or activities which are subject to insurance with E.F.K.A. as freelancers, for the first time, following the entry into force of L. 4387/2016 and onwards, it is clarified that said individuals will be subject to the payment of monthly contributions which correspond to the minimum limit of contributions (namely the social security rates applying to each professional activity calculated on a monthly income of 586,08 Euros) from the first month of entering into business activities until the last month of the year.
- In relation to issues of multiple professional activity (existence of parallel social security obligation), it has been clarified that the ceiling of monthly income of 5.860,80 Euros (up to which contributions are calculated) will not be separately applied to each self-standing professional activity, but the net taxable income of each professional activity will be accumulated (namely a single ceiling will be applicable). Nonetheless, it has not been explicitly clarified whether the single ceiling will also apply to cases of individuals who are occupied in parallel as employees and freelancers, as well as the rates on the basis of which the contributions referring to multiple professional activities will be calculated, in cases where the provided contributions rates differ per category of activity (for example 26,95% applies for the activities subject to insurance with former O.A.E.E., e.g. a member of General Partnership; whilst 37,95% applies for activities subject to insurance with former E.T.A.A., e.g. an engineer).