

# Payment of overdue premiums generates no income for employee and no costs for employer

## I. Minister of finance issues interpretation on payment of overdue ZUS premiums

The minister of finance has issued a general interpretation on the tax consequences of a remitter's payment of overdue social and health insurance premiums, which benefits taxable persons (number dd3.8203.1.2023; published in item 42 of the Official Journal of the Ministry of Finance in April 2023). The concerns of PIT remitters raised in their applications for individual tax law interpretations included whether a payment of overdue social and health insurance premiums made by an entity as a remitter of premiums using its own funds, whilst they should be financed by the taxable person (employee, contractor, former employee or former contractor), constitutes taxable income for the taxable person.

## II. Minister of finance adopts favorable position of the courts

In the general interpretation the minister of finance stressed that consistent and established administrative court rulings unanimously agree that a remitter's payment of overdue social and health insurance premiums constitutes the fulfillment of the remitter's legal obligation, does not constitute the fulfillment of an obligation for employees, contractors, former employees or contractors, and does not generate taxable income for those taxable persons. Whereas the tax authorities had thus far held a different view, claiming that a remitter's financing of social insurance premiums, which under separate regulations should be paid by the insured, is a circumstance that generates income for that taxable person in accordance with the provisions of the Personal Income Tax Act.

Payment by a remitter of overdue social and health insurance premiums for employees, contractors, former employees, or former contractors does not give rise to income for those taxable persons. This is because the payment of overdue premiums does not constitute a financial gain for the taxable person, and as such cannot be recognized as a gratuitous benefit for the taxable person.



### III. Payment of overdue premiums is not a benefit paid for the insureds

In adopting the arguments presented in the consistent and established line of court rulings the minister of finance found that by paying overdue social and health insurance premiums the premium remitter fulfills his legal obligation that cannot be ceded onto taxable persons (employees, contractors, former employees or contractors). Thus the later payment of these premiums by their remitter cannot be considered a benefit “for the insureds” (for employees, contractors, former employees or contractors), as under separate regulations (in this case the Social Insurance System Act) they are not obligated to pay them. The relevant position of the administrative courts has been confirmed in the case law of the Supreme Administrative Court (NSA), e.g. rulings issued on 27 October 2015 (case file II FSK 1891/13), 5 April 2019 (case file II FSK 1311/17) and 5 February 2021 (case file II FSK 2573/18).

### IV. It is the remitter, not the insured, who has an obligation to ZUS

In its rulings the NSA explained that although the legal relationship between the premium remitter (employer) and the insured (employee) makes the insured subject to social insurance, this does not give rise to any obligations on the part of the insured towards the Social Insurance Office, especially when it comes to the calculation, settlement and payment of the premiums due for this insurance. This is because all the obligations in this area rest with the premium remitter (employer), irrespective of how the premiums are financed. This also applies in situations when an insured is paid a salary that is not reduced by the premiums subject to financing from the insured’s income, the remitter later pays those premiums and does not ask the insured for a reimbursement of the premiums that were incorrectly paid with the salary.

### V. No income for person whose overdue premiums have been paid

In the general interpretation the minister of finance stated that a correct interpretation of relevant regulations leads to the conclusion that the payment by a premium remitter of overdue social and health insurance premiums for his employees, contractors, former employees or contractors does not generate income for those taxable persons under the PIT Act (Article 11). This is because the remitter’s payment of overdue premiums does not constitute a financial gain for the taxable person and as such cannot be considered a gratuitous benefit for that taxable person. Thus the remitter’s payment of overdue social and health insurance premiums should be seen as an act that is tax-neutral for the taxable person. The payment of those premiums by the remitter does not grant him the status of PIT remitter or impose on him the reporting obligation referred to in PIT regulations.



## VI. Courts have long held that remitters are responsible for overdue premiums

In the general interpretation the minister of finance cited numerous rulings of administrative courts, which have consistently held that a premium remitter who pays overdue social and health insurance premiums for a taxable person makes no financial contribution to that taxable person. Administrative courts have pointed out the fact that it is the remitter rather than the insured (employee, contractor, former employee or contractor) who has an obligation to the Social Insurance Office on account of overdue social and health insurance premiums. All the obligations in respect of paying overdue premiums rest with the premium remitter (employer), irrespective of how the premiums are financed.

## VII. Remitter cannot claim overdue premiums as tax-deductible costs

As explained by the minister of finance, a consequence of establishing that the payment by a remitter of overdue social insurance premiums for employees, contractors, former employees or contractors does not give rise to income for those taxable persons is that the costs incurred for their payment cannot be considered the remitter's tax-deductible costs insofar as they should be financed from the income of the taxable person (employee, contractor, former employee or contractor). The same rule will apply to the remitter's payment of health insurance premiums. The rule applies to remitters who are both PIT and CIT taxable persons.



**RAFAŁ KOWALSKI**  
Head of Tax Department  
tel.: +48 22 543 16 00  
Rafal.Kowalski@bdo.pl



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BDO spółka z ograniczoną odpowiedzialnością sp.k., ul. Postępu 12, 02-676 Warszawa;  
tel.: +48 22 543 1600, fax: +48 22 543 1601, e-mail: office@bdo.pl