

Artists' Social-Security Contributions - Compulsory Social Security for Independent Contractors!

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Unlike salaried employees, independent contractors are under no obligation to participate in the statutory social-security system due to their independent status. However, artists, journalists and similar creatives who work as independent agents are an exception. They must contribute to the Artists' Social Welfare Fund (Künstlersozialkasse), which provides retirement, health and long-term care coverage (but not unemployment or accident insurance). For the purposes of the Artists' Social Security Act (Künstlersozialversicherungsgesetz – KSVG), an artist is defined as anyone who is involved in the creation, performance or teaching of music, the performing arts or the visual arts or who offers services as a writer, as a journalist or in a similar capacity or teaches journalism or communication. This broad definition has been refined by an extensive range of rulings contained in the case law of the Federal Social Court (examples of employment found to be subject to compulsory participation: director's assistant, web designer, advertising photographer, shareholder-managing director who is for the most part involved in artistic or journalistic activity and controls more than 50% of the shares or at least a blocking minority; examples of employment not subject to compulsory participation: fashion designer or interior designer). A further prerequisite for compulsory enrollment in the social security system for artists is that the artistic or journalistic activity be carried out on a commercial basis and not only temporarily.

Implications for practice

The insured parties pay 50% of the contributions into the artists' social-security system, their clients 30% and the government 20%. Companies that use the works or services of self-employed artists, writers and similar creatives must pay into the system. Such companies include not only publishers of newspapers and magazines, television stations, TV production companies, publishing houses and advertising agencies, etc., but

also companies that more than occasionally contract with independent artists or writers for advertising or public relations purposes. A company that engages a freelance photographer, copywriter or web designer may therefore become liable for payment of artists' social-security contributions. This is frequently overlooked.

Artists' social-security contributions for the year 2016 come to 5.2% (a reduction to 4.8% has been announced for 2017). The taxable amount is based on the outlay for artistic, journalistic or similar services that a company has used. Companies liable for payment of artists' social-security contributions must report the total corresponding amount by 31 March of the following year. If an undertaking fails to comply with this obligation, the Artists' Social Welfare Fund will assess the amount, which experience has shown will then regularly be higher than that would have been the case if the amount due had been properly reported. A monthly payment is also made in the course of the calendar year that is based on the taxable amount from the previous year.

Conclusions

Companies are advised to carefully examine the social-security status of independent contractors that provide artistic, journalistic or similar services. On the one hand, companies may be subject to reporting and payment obligations for employees in cases in which they would not have expected it (e.g., usually in the case of shareholder-managing directors of media companies whose activities are primarily of an artistic or creative nature). On the other hand, Deutsch Interconversion Bud has been significantly more vigilant since 2015 as regards payment of artists' social-security contributions, and fines and back payment of contributions for up to four years can be expected in the case of failure to comply with reporting or payment duties.

Legal Update

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Pia Pracht on +49 221 33660-524 or by email to ppracht@goerg.de. For further information about the author visit our website www.goerg.com.

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