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The deadlines for paying social security contributions

O terminach opłacania składek na ubezpieczenia społeczne

Abstract

Social security contributions are to be paid according to statutory deadlines. Failure to pay on time results in various consequences for the payer. First of all, according to Article 23 Sec. 1 of the law relating to the social security system, for unpaid contributions the payer must pay statutory interest. ZUS (the Polish Social Security Institution) may also apply a sanction in the form of imposing an additional fee. However, statutory deadlines may be modified – e.g., on the basis of Article 12 Sec. 5 of the Tax Ordinance or as a result of postponing the date of payment of contributions. A contentious issue, which is also analysed by the authors,

is whether the repayment of overdue contributions in instalments causes the statutory deadline for their payment to be extended – until the date specified in the instalment agreement.

Keywords: deadlines; social insurance contributions; facilitations in the payment of contributions

Streszczenie

Składki na ubezpieczenia społeczne powinny być opłacane w terminach ustawowych. Ich nieopłacenie w terminie skutkuje różnorodnymi konsekwencjami dla płatnika składek. Przede wszystkim, zgodnie z art. 23 ust. 1 ustawy systemowej, od nieopłaconych w terminie składek należne są od płatnika składek odsetki za zwłokę. ZUS może także stosować sankcję w postaci wymierzenia opłaty dodatkowej. Terminy ustawowe mogą być jednak modyfikowane – np. na podstawie art. 12 § 5 Ordynacji podatkowej czy w wyniku odroczenia terminu płatności składek. Kwestią sporną, którą także analizują autorzy jest ustalenie, czy rozłożenie zaległych składek na raty powoduje, że wydłużeniu ulega ustawowy termin ich zapłaty – do dnia określonego w umowie o rozłożenie na raty.

Słowa kluczowe: terminy, składki na ubezpieczenia społeczne, ułatwienia w opłacaniu składek

1. Introduction

Social security contributions, as well as other public levies, should be paid on the dates resulting from the statutory provisions. It seems that Article 47 Sec. 1 of the Act of 13 October 1998 on the social insurance system¹ leaves no doubt in this regard. It stipulates that within the same time limit the payer of contributions sends a settlement declaration, personal monthly reports, and pays contributions for a given month not later than:

¹ Uniform text: Journal of Laws of 2017 it. 1778 as amended (later referred to as: social security system act).

- 1) the 10th day of the following month – natural persons paying the contribution only for themselves,
- 2) the 5th day of the following month – budget units and self-government budget institutions,
- 3) the 15th day of the following month – other payers.

Failure to pay on time results in various consequences for the payer. First of all, according to Article 23 Sec. 1 of the law relating to the social security system, for unpaid contributions the payer must pay statutory interest. ZUS (the Polish Social Security Institution) may also apply a sanction in the form of imposing an additional fee (Article 24 Sec. 1a of the social security system act), which may amount to 100% of unpaid contributions within the specified time limit.

Statutory deadlines cannot be modified based on unilateral declarations of intent of the payer or the Social Insurance Institution. The alteration of the dates laid down in Article 47 Para. 1 is possible only in a situation which is provided for by the law itself – i.e., the possibility of postponing the payment deadline by the Social Insurance Institution at the debtor's request as stipulated in Article 29 Para. 1. It is important that the postponement takes the form of an agreement based on the indicated provision of the law relating to the social security system. Some modifications related to deadlines are also possible due to the application of Article 12 of the Act of 29 August 1997 – Tax Ordinance², which is possible due to the reference contained in Article 31 of the Act.

The aim of the study is to determine if and in which cases the deadlines specified in Article 47 Para. 1 are subject to change. In particular, the authors will analyse the issue of deadlines regarding making contribution payments in the situation of postponement of the date of payment and entering an “instalment scheme” and will discuss some of the effects of delayed payment of social security contributions. The paper is primarily based on the dogmatic and legal research method.

² Uniform text: Journal of Laws of 2017 it. 1778 as amended (later referred to as: social security system act).

2. Statutory deadline and postponement of the payment of contributions

Determining whether the deadlines for paying social security contributions specified in art. 47 Para. 1 of the system law may be modified is extremely important for contribution payers. The implementation of statutory duties, primarily within the scope of contribution payment, has implications not only on the level of the social security system act. For instance, it can be indicated that pursuant to Article 26a Para. 1 of the Act of 27 August 1997 on vocational and social rehabilitation and employment of the disabled³, the employer is entitled to a monthly subsidy to the salary of a disabled employee from the funds of the State Fund for Rehabilitation of Disabled Persons, if such an employee has been entered into the register of employed disabled persons. However, the said financing is not available (Article 26a Para. 1a1 point 3) if the monthly salary costs were incurred by the employer with a failure to meet deadlines resulting from separate provisions and the delay exceeds 14 days.

Undoubtedly, the “deadlines resulting from separate provisions” are, above all, the deadlines specified in Article 47 Para. 1 of the social security system act. However, the legislator allows the Social Insurance Institution to postpone the payment deadline for contributions resulting from this provision. It is extremely important that the postponement of the payment deadline for contributions is regulated in Article 29 Para. 1 along with the institution of payment of outstanding contributions in instalments. This provision is worded as follows: “For economic reasons or other reasons that merit consideration, the Institution may, at the debtor’s request, postpone the due date for payment of contributions and spread the outstanding amounts into instalments, taking into account the debtor’s payment possibilities and the state of social security finances.”⁴

³ Uniform text: Journal of Laws of 2018 it. 511 as amended.

⁴ Postponing the date of payment and spreading payments into instalments is included in the doctrine for “mechanisms facilitating the payment of contributions for the payer” – cf., e.g., I. Jędrasik-Jankowska, *Ubezpieczenie emerytalne. Trzy filary [Pension Schemes. Three Pillars]*, Warsaw 2001:91–96; I. Jędrasik-Jankowska, *Ubezpieczenie społeczne, tom 1, Część ogólna [Social Security, vol. 1. General Part]*, Warsaw 2003:63–66; I. Jędrasik-Jankowska, *Pojęcia i konstrukcje prawne ubezpieczenia społecznego [Legal Terms and Constructs of Social Insurance]*, Warsaw

The consequence of regulating two different institutions within a single editorial unit is a certain inconsistency of the provision. First of all, with regard to the postponement of the payment deadline, one should pay attention to the entity authorized to submit an application for such an action – namely, the “debtor”. Owing to the fact that, in the case of postponement, it concerns changing the deadline that has not yet expired, it is difficult to assume that the payer who is obliged to pay the contributions is a debtor. He will become a debtor if the payment deadline expires while the contributions have not been paid.

The Social Insurance Institution is not authorized to postpone the payment period in respect of those contributions whose payment deadline has already expired. In such a situation, one could possibly speak of a reinstatement of the deadline for paying contributions; however, the social security system act does not provide for it.

It should be emphasized that the Social Security Institution is not obliged to accept all applications for the postponement of the payment deadline. The legislator used the construction of administrative discretion (“the Institution may”), indicating that the Social Insurance Institution must analyse both the individual situation of the payer (“considering the debtor’s payment possibilities”) as well as the public interest (“the state of social security finances”).

Therefore, submission of an application for postponement of the deadline for contribution payment does not mean automatic postponement of the deadlines set out in Article 47 Para. 1 of the social security system act/law relating to the social security system. This occurs only after the Social Security Institution has accepted the application and

2010:41; more on “mechanisms facilitating the payment of contributions for the payer” cf. J. Wantoch-Rekowski, *Stosowanie ułatwień w opłaceniu składek na ubezpieczenia społeczne ze względu na tzw. stan finansów ubezpieczeń społecznych* [Applying Facilitations in the Payment of Social Insurance Contributions as a Result of the So-called State of Social Insurance Finances], „Prawo Budżetowe Państwa i Samorządu” 2013;1(1):25–38, doi:<http://dx.doi.org/10.12775/PBPS.2013.002> and J. Wantoch-Rekowski, *Ułatwienia w opłaceniu składek na ubezpieczenia społeczne – zagadnienia terminologiczne* [Facilitations in the Payment of Social Insurance Contributions – Terminological Issues], „Prawo Budżetowe Państwa i Samorządu” 2014;3(2):35–44, doi:<http://dx.doi.org/10.12775/PBPS.2014.028>.

signed an appropriate agreement specifying the new deadline for the payment of contributions.

Article 29 Para. 1 and its consequences in terms of postponing the deadlines specified in Article 47 Para. 1 cannot, however, be interpreted separate from Article 30 of the social security system act, according to which “Articles 28 and 29 shall not apply to insured persons who are not payers of contributions”. In the case of a contributor who pays the contributions only for himself, postponing the payment deadline will result in a change of the date specified in Article 47 Para. 1 to the deadline resulting from the signed agreement. The situation becomes more complicated if the payer pays contributions for another entity. The “classic” situation is the paying of the contributions by the payer-employer in connection with the insured-employee being subject to the obligatory social insurance – part of the contributions is financed by the employer (part of the pension insurance contribution, part of the disability insurance contribution and the entire accident insurance premium), and a part by the employee (part of the pension insurance contribution, part of the disability insurance contribution and the entire sickness insurance contribution). Thus, from Article 30 it follows that it is not possible to postpone the date of payment in respect of those contributions which the employee finances from his own resources. The employee bears the economic burden of paying the contributions upon receiving remuneration from the employer, who deducts the contributions (in part due from the employee) and the advance payment for personal income tax. In the case of the contributions financed by the employee, the period set out in Article 47 Para. 1 is binding. Therefore, another deadline resulting from the agreement applies solely to the employer’s financial contribution⁵.

In the abovementioned context, a uniform ruling practice⁶ was

⁵ Cf. also: I. Jędrasik-Jankowska, *Pojęcia i konstrukcje prawne ubezpieczenia społecznego* [Legal Terms and Constructs of Social Insurance], Warsaw 2018:66.

⁶ Cf. decision of the Provincial Administrative Court in Łódź of 22 March 2018, III SA/Łd 52/18, LEX No. 2471444; decision of SAC in Lublin as of 8 February 2018, III SA/Lu 564/17, LEX No. 2455959; decision of PAC in Szczecin of 20 September 2017, I SA/Sz 513/17, LEX No. 2381733; decision of PAC in Rzeszów of 8 August 2017, I SA/Rz 361/17, LEX No. 2345327; decision of PAC in Warsaw of 7 July 2017, II GSK 3080/15, LEX No. 2356404.

developed with regard to the write-offs of social insurance contributions regulated by Article 28 of the social security system act, pursuant to which “the entrepreneur cannot effectively apply for writing off the amounts of contributions assigned to his account, as to the part of unpaid social insurance contributions of employees which are financed by themselves”. The introduction of the write-offs referred to in Article 30 of the social security system act means that the possibility of postponing, writing off and spreading contributions into instalments (contributions due) financed by the insured who are not the payers was definitely eliminated. The payer of contributions does not have the right to demand their postponement, write-off and pay in instalments, as it is not he/she, but the insured that has incurred the actual financial burden of these contributions.

In the decision of 22 March 2018, the Provincial Administrative Court (PAC) in Łódź⁷ also emphasized that “the payer is only an intermediary who pays contributions to the Social Insurance Institution, and the retention of these contributions or their disposal is in fact a violation of the provisions of the social security system act. The role of the employer who is the payer of contributions financed by the insured excludes his reference to his own difficult financial situation as a justification for the Social Insurance Institution’s resignation from the enforcement of contributions whose real financial burden was borne by the insured.”

3. Statutory deadline and the Tax Ordinance

As indicated in the Introduction, the contribution payment deadlines are modified by Article 12 of the Tax Ordinance, in particular the provisions of Article 12 Sec. 5 – “if the last day of the deadline falls on a Saturday or a public holiday, the next day after the day or days free of work shall be considered the last day of the deadline, unless the tax laws stipulate otherwise”. The literature indicates that “it is clear from the wording of the provision that it applies only to the last, and not the starting day of the deadline”⁸.

⁷ III SA/Łd 53/18, LEX No. 2471445.

⁸ W. Morawski [in:] J. Wantoch-Rekowski (ed.), *Ustawa o systemie ubezpieczeń społecznych*.

The days free of work are defined in the Act of January 18, 1951 on non-working days⁹. According to Article 1 point 1 the days free from work are: January 1 – New Year, January 6 – Epiphany, Easter Sunday, Easter Monday, May 1 – National Holiday, May 3 – Third of May Constitution Day, the first day of Pentecost, Corpus Christi Day, August 15 – the Assumption, November 1 – All Saints Day, November 11 – National Independence Day, December 25 – the first day of Christmas, and December 26 – the second day of Christmas.

4. Selected consequences of late payment of social security contributions

Unpunctual payment of contributions causes certain legal consequences for the contribution payer. The authors' attention is mainly focused on the problem of interest on late payment.

The obligation to pay interest on late payment of social security contributions by the contributor as determined on principles similar to those in the field of tax arrears on the basis of the Tax Ordinance, results from Article 23 Para. 1 of the social security system act.

Interest for late payment is characterised by its accessory nature in relation to the main amount due (contribution arrears), which is tantamount to the fact that it is not a standalone payment, separate from contribution arrears¹⁰. Moreover, the obligation to pay interest can only arise after arrears of contributions have arisen. It should be noted that according to the original provisions of the social security system act, the obligation to pay interest on contributions not paid on time was applicable to each occurrence of arrears of contributions. The dependency of interest calculation on the amount of overdue contributions occurred only as a result of adding the provision of Article 23, Para. 1a to the normative text of the social security system act in connection with the amendment

Komentarz [Act on Social Security System. Commentary], Warsaw 2015:291.

⁹ Uniform text: Journal of Laws of 2015 it. 90.

¹⁰ D. Wajda [in:] B. Gudowska, J. Strusińska-Żukowska (ed.), *Ustawa o systemie ubezpieczeń społecznych. Komentarz [The Act on the Social Security System. A Commentary]*, Warsaw 2011:410; cf. also the ruling of PAC in Wrocław of 4 January 2017 (III SA/Wr 1135/16, LEX No. 2321804) and of 5 July 2017 (III SA/Wr 202/17, LEX No. 2366876).

of the act amending the act on the social security system and some other acts of 18 December 2002.¹¹

In the judgment of 10 September 2015, the Court of Appeal in Szczecin¹² stated that the establishment of a social security relationship creates rights and obligations on both sides. The rights and obligations resulting from this relationship should be exercised within the time limits specified in the acts, and a consequence of the delay in their performance is the right of the pension authority to receive interest. The court pointed out that “the right of the pension authority to interest results from the content of Article 23 Para. 1 of the social security system act. According to the aforementioned standard, interest on late payment of contributions is due from the contribution payer on the principles and in the amount specified in the Tax Ordinance. Referring directly to the Tax Ordinance means that the interest on contributions not paid on time is treated on an equal footing with tax arrears. The obligation to pay interest on social security contributions not paid on time does not depend on the payer’s fault, and the obligation to calculate interest arises under the law”. The above interpretation concerning the calculation of interest for late payment by virtue of law, and not depending on the payer’s fault, has been referred to several times in the case law of the courts of appeal, i.e., in the judgment of the Court of Appeals in Łódź of 8 April 2013¹³ and the judgment of Court of Appeals in Warsaw of 8 February 2013¹⁴.

A curiosity is the Lithuanian legislation, which provides for the imposition of a penalty of double the amount of insufficiently paid contributions if the audit reveals that social security contributions have been unlawfully reduced¹⁵. With regard to the Polish regulations, this resembles the institution of an additional fee, which is a type of sanction for failure to pay contributions on time or for paying them in a lowered

¹¹ Journal of Laws of 2002 No. 241, it. 2074.

¹² Ref. III AUa 906/14, LEX No. 1843114.

¹³ Ref. III AUa 306/13, LEX No. 1335691.

¹⁴ Ref. III AUa 1423/12, LEX No. 1281126.

¹⁵ I. Nekrošius, V. Petrylaitis, *Social Security Law in Lithuania*, Wolters Kluwer, Alphen aan den Rijn 2010:64.

amount. It should be stressed that the Lithuanian regulations provide for waiving the imposition of penalties for the committed infringement in the event that the insured person notices that social security contributions have been reduced and, in particular, voluntarily corrected the errors, paid the unpaid amount of social security contributions and submitted corrected documents¹⁶. In this case, however, default interest is still due. The Lithuanian regulations also provide for a write-off when it is proven that the calculation of too low social security contributions was the result of circumstances outside the control of the insured person, which the insured person did not foresee or could not foresee¹⁷.

The above example is reflected in the view, also stressed in the Polish doctrine, which states that interest should not be treated as a penalty, in particular due to the fact that the payer's default does not have to be culpable¹⁸. What is more, interest is sometimes considered a "price" for the use of someone else's money¹⁹, with which one has to agree in principle (however, there are views according to which interest constitutes a sanction²⁰).

It should be noted that interest for late payment is due by virtue of law and is paid without being called upon by the Social Insurance Institution²¹. However, as it has been pointed out above, the reference to the Tax Ordinance induces, i.e., the appropriate application of the rule resulting from Article 12 Sec. 5 of the Tax Ordinance applicable to receivables from social security contributions.

Within the scope of the aforementioned additional fee as a potential consequence of irregularities in the payment of contributions, it should be pointed out that the basis for its estimation is Article 24 Para. 1a of the social security system act, which stipulates that in the case of non-payment

¹⁶ *Ibidem*.

¹⁷ *Ibidem*.

¹⁸ I. Jędrasik-Jankowska, *Pojęcia i konstrukcje prawne ubezpieczenia społecznego* [Legal Terms and Constructs of Social Insurance], Warsaw 2018:67.

¹⁹ *Ibidem*.

²⁰ E.g., D. Wajda [in:] B. Gudowska, J. Strusińska-Żukowska (ed.), *Ustawa...* [The Act...]:410.

²¹ Cf. D. Karkowska, A. Nerka, *Pozycja płatnika składek w ubezpieczeniu społecznym i zdrowotnym* [Contribution Payer's Position in Social and Health Insurance], Wolters Kluwer, Warsaw 2007:187.

or underpayment of contributions, the Social Security Institution may impose an additional fee on the payer of contributions of up to 100% of the amount of unpaid contributions. The decision to levy an additional fee may be appealed against to the court in accordance with the principles set out in Article 83 of said act.

In the case of part of the payers, late payment of contributions also conjures up consequences in the terms of public finance discipline. According to Article 14(1) of the Act of 17 December 2004 on Liability for Violation of Public Finance Discipline²², a failure by a unit of the public finance sector to pay social security contributions on time or to pay them in an amount lower than the one resulting from a correct calculation is a breach of public finance discipline.

5. Deadline for payment of contributions and spreading the amount due into instalments

Article 29 Para. 1 of the social security system act regulates not only the postponement of the payment deadline, but also the spreading of receivables from contributions into instalments. It should be emphasized that the “instalment schedule” applies to receivables on account of contributions. Pursuant to Article 24 Para. 2 of the social security system act, the receivables from contributions are contributions and interest for late payment, enforcement costs, costs of a reminder, and an additional fee. This facilitation can be requested by the debtor, i.e., the payer who has not fulfilled the obligation to pay the contributions on time. There is no doubt that the payment of contributions in instalments takes place in a situation where the payer of contributions is in arrears, i.e., the payer has not paid the contributions within the statutory deadline.

A surprising interpretation of the deadlines for the payment of social security contributions appeared in the decision of the PAC in Warsaw of 15 February 2018²³. The court took the position that the spreading

²² Uniform text: Journal of Laws of 2018, it. 1458 as amended.

²³ V SA/Wa 480/17, LEX No. 2469250.

of overdue contributions into instalments causes the deadline for their payment to be extended to the date specified in the agreement on the instalment schedule. However, it is impossible to agree with this standpoint. The occurrence of contribution arrears is a consequence of the payer's failure to meet the deadline for the payment of social security contributions. Failure to pay contributions by the deadline specified in Article 47 Para. 1 will result in the occurrence of contribution arrears, on which interest on arrears is charged. If a debtor applies for payment of contributions in instalments and the application is accepted by the Social Insurance Institution, it does not result in new deadlines for the payment of contributions that have not been paid. The deadlines specified in the "instalment schedule" are contractual deadlines for the payment of the contribution arrears which have arisen. If the interpretation of the PAC in Warsaw was to be accepted, it should be concluded that interest for late payment should not be included in the instalments of contributions, because – as the court ruled – there was no delay in exceeding the deadline set in the "instalment schedule".

There should be no doubt that the conclusion of an agreement between the Social Security Institution and the debtor with regard to the payment of contributions in instalments has no impact on the determination of the deadline for the payment of contributions, which results from Article 47 Para. 1 of the social security system act.

6. Conclusion

As a rule, social security contributions are paid within the time limits set out in Article 47 Para. 1 of the social security system act. However, the legislator provided for the possibility of modifying these deadlines. First of all, it concerns the possibility for the Institution, resulting from Article 29 Para. 1, of postponing the payment deadline at the debtor's request. It should be stressed, however, that such a postponement may apply to those deadlines which have not yet expired. Thus, on the basis of statutory authorization, the Social Insurance Institution postpones the deadlines

specified in Article 47 Para. 1 on the conditions specified in Article 29 Para. 1. However, this is not possible with regard to the deadlines for the payment of contributions financed by insured persons who are not payers of contributions.

Another modification with respect to the time limits regulated in Article 47 Para. 1 is introduced by Article 12 of the Tax Ordinance, which is applicable due to the reference contained in Article 31 of the social security system act.

There is a view in the case law that the spread of overdue contributions into instalments causes the deadline for their repayment to be extended to the date specified in the agreement on the instalment scheme. However, such an interpretation should be regarded as erroneous. The payment of contributions in instalments has no impact on the deadlines set out in Article 47 Para. 1, which have been exceeded by the payer.

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