

**COMMENTS REGARDING RULING No 24-00-7/25.02.2010
OF THE EXECUTIVE DIRECTOR OF NRA**

We would like to hereby inform you that Ruling No 24-00-7 dated 26 February 2010 (herein after referred to as “the Ruling”) issued by the Executive Director of the National Revenue Agency (NRA) was published on the Internet website of NRA on 26 February 2010. It provides the revenue authorities with compulsory rules for unified application of the tax and social security legislation regarding the **statutory state social security contributions due on non-accrued remunerations of persons exercising activity under agreements for management and control of commercial companies**, sole traders, non-personal entities as well as insolvency administrators and liquidators (socially secured by means of Art. 4, para 1, item 7 of the Social Security Code (SSC)).

The amendments to SSC in force as from 1 January 2010 commented in the Ruling concern the new rules that social security contributions for persons socially secured under Art. 4, para 1, item 7 SSC shall be due not only on received or accrued but not paid gross monthly remunerations but also on their non-accrued monthly remunerations. For the said persons, social security contributions on non-accrued monthly remunerations shall be due on at least the minimum monthly income for social security purposes defined by basic business activities and professions qualification groups. The concrete case commented in the Ruling refers to the obligation for payment of social security contributions on the minimum monthly income for social security purposes defined by basic business activities for persons secured under Art. 4, para 1, item 7 SSC (for 2010 – between BGN 393 and BGN 1,376) **in case no written agreement for management and control has been concluded** in violation of the Commercial Act’s provisions. The opinion stated in the Ruling is that the absence of such an agreement does not change the grounds on which the persons are subject to social security, **provided they exercise work** of management and control. The performance of working activity by the persons (Art. 10 SSC) is a sufficient condition for availability of grounds for statutory social security.

Based on the quoted SSC provisions, in our opinion, it could be concluded that the obligation for accrual and payment of social security contributions would be available if the following conditions are simultaneously available:

- (1) the person is assigned/elected general manager and is also entered as such into the Commercial Register or the BULSTAT Register (applicable to non-personified entities);
- (2) functions of management and control are actually performed;
- (3) remuneration is agreed or there is no explicit agreement on the remuneration amount.

Regarding item 3 above, it should be clarified that if no remuneration is agreed, or it is explicitly agreed that no such is due, it is disputable whether this is a case of non-accrued remuneration. The

accrual of remuneration means that it is recorded as a liability of the company to the general manager. In case no remuneration amount is agreed or it is explicitly stated that such is not due, then no liability for accrual of remuneration arises for the company. By means of the last SSC amendments, social security contributions are due on the paid remunerations, on the accrued but unpaid remunerations or on the non-accrued remunerations, i.e. on remunerations due by the company, which are subject to accrual but have not been accrued. **In our opinion, the issued Ruling interprets unfairly the SSC provisions since it accepts that for social security legislation purposes non-accrued remuneration is also available where a management agreement has not been concluded (i.e. in case of a lack of an explicit written agreement between the parties that remuneration is not due), and without taking into consideration the circumstance whether the assignee under a management and control agreement is actually working or not.**

In view of the abovestated and the standpoint and arguments expressed in the Ruling, we believe that the risk of claiming statutory social security contributions arises as well in the cases when an individual is recorded general manager or member of board of directors, management or supervisory body and no remuneration is paid to him/her. Different scenarios are possible:

- the person is exercising management or control functions and has concluded management agreement without agreed remuneration;
- the person is recorded general manager and has concluded agreement, which explicitly states that no remuneration is due to him/her by the company;
- the person is recorded without actually performing management activity but a procurator and/or another assignee under a management agreement is appointed who exercises in fact the activity;
- the person is recorded and has concluded a management agreement providing for remuneration but for some reason he/she does not effectively exercise his/her managing duties and therefore the remuneration is not due.

No social security consequences arise in the scenarios listed above, including the scenario commented in the Ruling, if:

- the assignee to a management and control agreement is socially secured on the maximum monthly income for social security purposes under an employment contract or another management/control agreement;
- the social security legislation of another member state is applicable to the assignee under a management and control agreement in accordance with Regulation (EEC) 1408/71 on the application of social security schemes to employed persons, to self-employed persons, and to members of their families moving within the Community.

In case the assignee under a management and control agreement is socially secured according to Art. 4, para 1 and/or para 2 SSC on an amount lower than the maximum monthly income for social security purposes (BGN 2,000 for year 2010), or if the assignee under a management and control agreement is not socially secured as per the Bulgarian legislation and Regulation (EEC) 1408/71 is not applicable to him/her, the revenue authorities could claim social security contributions on:

- the minimum monthly income for social security purposes for the respective position and basic business activity; or
- an amount lower than the minimum monthly income for social security purposes for the respective position and basic business activity representing the difference up to the maximum monthly income for social security purposes, if the person is socially secured on other grounds as well. In this case, the provision of Art. 6, para 10 SSC should be considered regarding calculation of the income for social security purposes of persons receiving remuneration for work exercised on different grounds.

Regarding the Ruling, we would recommend you to consider the circumstances in relation to the social security of general managers, procurators and members of management bodies of your company.

Should you have any questions or need any assistance, please do not hesitate to contact us.

The information in this material is not exhaustive. Should any questions on the application of the said provisions arise, please do not hesitate to contact us at tel.: 02/943 37 00, fax: 02/943 37 07, e-mail: office@afa.bg or at 38, Oborishte Str., Sofia 1504.