

Is athlete employee? (2) (3/50/18)

This article completes what we wrote [last week](#).

Taxes payable by self-employed persons

A self-employed person is also liable to pay national social insurance (NSI) contributions and personal income tax (PIT), but unlike an employee, the self-employed may contribute NSI on a freely chosen amount of business income, which should not be less than the minimum wage (i.e. €430). A self-employed person's NSI rate in 2018 is 32.15% under the Cabinet of Ministers' Regulation No. 786 on apportioning the NSI contribution rate between NSI types. The new contribution rules also provide that a 5% NSI contribution is payable towards pension insurance on any difference between the actual income and the freely chosen amount on which NSI has been contributed. And the self-employed may deduct any expenses incurred in the conduct of business.

The taxes paid by a self-employed person may be lower than for an employee (the self-employed pays PIT on profits and may pay NSI at a lower rate and on profits only).

The State Revenue Service's interpretation

Under the relevant case law, the SRS is required and authorised to examine the economic substance of each transaction in ensuring that statutory taxes are charged and paid to the government.¹ The Court of Justice of the European Union has also offered similar arguments stating that whether the main purpose of transactions is to obtain a tax advantage should be concluded from their content and true meaning. In assessing a transaction, the court may consider its completely artificial nature and any legal, economic or personal connections.² So in assessing the transaction for tax purposes, the SRS will consider its economic substance and not its legal form.

To determine whether wage tax is payable for an athlete, at least one of the criteria prescribed by article 8(2.2) of the PIT Act should be met (e.g. the taxpayer is economically dependent on the customer who acquires their services; the taxpayer is integrated in the company; the taxpayer's actual days off and holidays are linked with the company's internal rules or the working schedule of other individuals employed by the company; the taxpayer is trading under another party's direction or control and cannot engage their own employees or subcontractors in doing the work).

Finally, to assess the legal form and determine whether the athlete is an employee, we should consider whether the contract has all the key elements of an employment contract. If it does, the contract may be essentially considered an employment contract, and so the legal relationship between the employee and employer is governed by the Labour Code.

The self-employed should pay taxes and may deduct any expenses incurred in the conduct of business, NSI contributions can be paid at a lower rate, and PIT can be paid on profits. The employee does not have such rights, with the employer paying employment taxes for them.

And the SRS will assess the economic substance of the transaction, not its legal form. If in assessing the transaction for tax purposes, the SRS finds at least one of these criteria, there is a risk that wage tax will

be payable on the person's income from providing services.

¹ The Administrative District Court's ruling of 17 April 2013 on case No. A420422312

² The CJEU ruling of 21 February 2006 on case C-255/02 Halifax, paragraph 81