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By PwC Deutschland | 21 June 2024

Federal Social Court unexpectedly rules in favour of the obligation to pay social security contributions on late flat-rate taxation for office parties.

In a recent judgement, the Federal Social Court confirmed the German Pension Insurance of Oldenburg-Bremen’s opinion and thus overturned the decisions of the lower courts. At the heart of the case was the question of whether expenses for an office anniversary celebration, which amounted to more than EUR 110 per employee and was only subjected to flat-rate taxation on a date well after the pay slip was issued, were subject to social security contributions.

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Background

A business celebrated a company anniversary on 5 September 2015 and paid flat-rate tax on the costs of around EUR 163,000 for the 162 employees. However, the flat-rate tax was not paid until 31 March 2016. Following an official audit, the pension insurance company demanded the payment of social security contributions and levies totalling around EUR 60,000.

Decisive legal situation

The Court stated that the flat-rate taxation must be paid promptly at the time of the payroll for the respective accounting period. In this case, the lump-sum taxation should have been finalised with the payroll for September 2015. The actual execution of the flat-rate taxation at the end of March 2016 was therefore late and led to the subsequent claim for social security contributions.

Consequences for the practice

This judgement has far-reaching consequences for the practice. Businesses must ensure that the flat-rate taxation of expenses for office celebrations occurs at the same time as the payroll accounting for the corresponding accounting period in order to avoid additional social security contributions. The decision shows that a different approach under tax law has no impact on the assessment under social security law.

However, we will have to await the exact grounds for the decision.

Reference

Press release of the Federal Social Court under File Number B 12 BA 3/22 R

Keywords

lump sum, social security, social security contributions