

## The groundbreaking judgment of the Supreme Court – a shareholder in a two-person limited liability company without ZUS contributions

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On February 21, 2024, the Supreme Court ruled that a shareholder in a two-person limited liability company holding 99% of all shares is not subject to social insurance contributions under Article 6 clause 1 point 5 in connection with Article 8 clause 6 point 4 of the Act of October 13, 1998 on the social insurance system.

### The essence of the issue

Let us be reminded that, in accordance with statutory provisions, shareholders in single-member limited liability companies are mandatorily subject to social and health insurance contributions.

However, in practical terms, the Social Insurance Institution (ZUS) has persistently sought contributions even when one of the shareholders holds a controlling stake and wields decisive influence over decisions pertaining to the company's operations. According to ZUS, in such instances, the majority shareholder should be subject to compulsory social and health insurance, analogous to a partner in a single-member limited liability company.

Unfortunately, over the years the jurisprudence of common and administrative courts has not developed a uniform approach to the issue in question. In particular, doubts have arisen as to what proportion of shares between partners does not give rise to the risk of disputes.

### The position of the Supreme Court

The Supreme Court has conclusively determined that an individual possessing 99% of shares in a two-person limited liability company cannot be treated as a shareholder in a single-member limited liability company. Consequently, such an individual is not subject to mandatory social insurance contributions.

The court has thus aligned itself with the literal interpretation of the statutory provisions.

### Practical consequences of the resolution

The resolution of the Supreme Court may serve as a basis for correcting Social Insurance Institution (ZUS) settlements and reclaiming overpayments in contributions from previous years.

If you are interested in the above information and its impact on your business, please do not hesitate to contact us at:

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