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Report to the federal Parliament: company contribution



In its report to the federal Parliament, the Court of Audit points out the shortcomings of the regulation and procedures concerning the company contribution paid by the companies liable to the company tax or non-resident income tax since 1 July 1992. The contribution is collected by the private social insurance funds and a national public fund, and afterwards transferred to a branch of the social security (INASTI-RSVZ) in order to finance the self-employed sector. It brought in an amount of 210 million euros in 2012. The Court of Audit noticed that the audit of the social insurance funds could be improved and that the system requires a better follow-up and evaluation. It recommends to ascertain which adjustments could lead to a more efficient collection of the company contribution, for instance in the light of a judgment of the Constitutional Court, which qualified this contribution as taxation.

Companies liable to the company tax or the non-resident income tax are obliged to pay a company contribution since 1 July 1992. As of 2004, the contribution consists of a small and a major amount, depending on the balance sheet total of the company. In 2012, the contribution amounted to 347.50 and 868 euros resp. and the total to 210 million euros.

Companies are required to affiliate with a social insurance fund or the national fund within three months after their establishment or after they become liable to the non-resident income tax. The Ministry of Social Security supervises this affiliation. Companies which do not affiliate voluntarily with a private fund, are automatically affiliated with the national fund.

The Court of Audit examined to what extent the regulation, organization and procedures of the INASTI-RSVZ and the ministry guarantee an accurate and efficient collection of the company contribution and whether or not the contribution is adequately followed up and, if necessary, adjusted.

The audit showed that the regulation contains several weaknesses. There is for instance a twofold condition regarding the implementation of the contribution : (1) only companies are bound to pay it and (2) they must be liable to the company tax or non-resident income tax. That twofold condition does not only lead to internal differences of interpretation, but also

to differences as regard the scope of application which is defined by the Ministry of Finance concerning the company tax and the non-resident income tax.

The calculation of the company contribution is based on the balance sheet total. The regulation and application by the administration do however not take into account the companies which do not have to file balance sheets nor those which file them too late or not at all.

The various exemptions also lead to difficulties. For instance, companies in liquidation, bankruptcy or judicial reorganization are exempted from the tax but the regulation contains some gaps, which sometimes lead to an unequal treatment of companies. The pragmatic solutions to exempt inactive companies are not entirely in line with the regulation. Moreover, the exemption conditions for young partnerships are difficult to check.

The INASTI-RSVZ and the Ministry of Social Security often attempt to find a solution for these shortcomings by construing the regulation through a series of notes to the social insurance funds. That is in theory a positive initiative, but the interpretation of those notes is sometimes ambiguous or not in accordance with the regulation. Furthermore, instructions are sometimes missing. The large number of successive notes and compilations of answers to questions coming from funds can also cause confusion. The Court of Audit is asking to better structure that information.

Many bodies have to work together to collect the contribution. Since the company contribution has been qualified as tax by the Constitutional Court, a taxation and simplification of the contribution collection may be considered.

The INASTI-RSVZ supervises the affiliation of the companies. The Court of Audit stated some external shortcomings, like data errors provided by the Companies Data Bank, as well as internal ones, like errors in the repertory of companies at the INASTI-RSVZ level and an inadequate follow-up. This allows for some companies to wrongfully remain unaffiliated.

In cases “worthy of consideration” or in case of *force majeure*, the INASTI-RSVZ is allowed to abandon a contribution penalty for late payment. That happens automatically for small penalty. The Court of Audit asks to review this and to clearly define the concepts.

The Ministry of Social Security has improved its monitoring on the social insurance funds in the recent years. However, the checks are still too file-oriented, while processes or systems would yield more added value for the funds, as a result of their structural solutions for shortcomings. The Ministry of Social Security and the INASTI-RSVZ should also cooperate closely with respect to those monitoring actions.

The Court of Audit concluded that information on the contribution is being collected and reported but that it is not enough oriented towards the management, the assessment and the possible adjustment of the contribution. Furthermore, the contribution has not yet been globally evaluated until now.

In terms of functioning, the INASTI-RSVZ activities can be assessed based upon the objectives formulated in the administrative agreement. The associated standards are however in general too comprehensive.

The Minister SMEs, Self-Employed and Agriculture took note of the conclusions and recommendations of the Court of Audit. She replied that she had assigned the administration in 2012 to list the necessary adaptations regarding the regulation. As a result, a provision has recently been amended regarding the exemption in case of judicial reorganization. If other amendments are necessary, they will be forwarded to her successor.