KPMG Law

Employment contract vs. B2B contract

雇用契約とB2B契約の比較(法務の観点)

2025年6月26日

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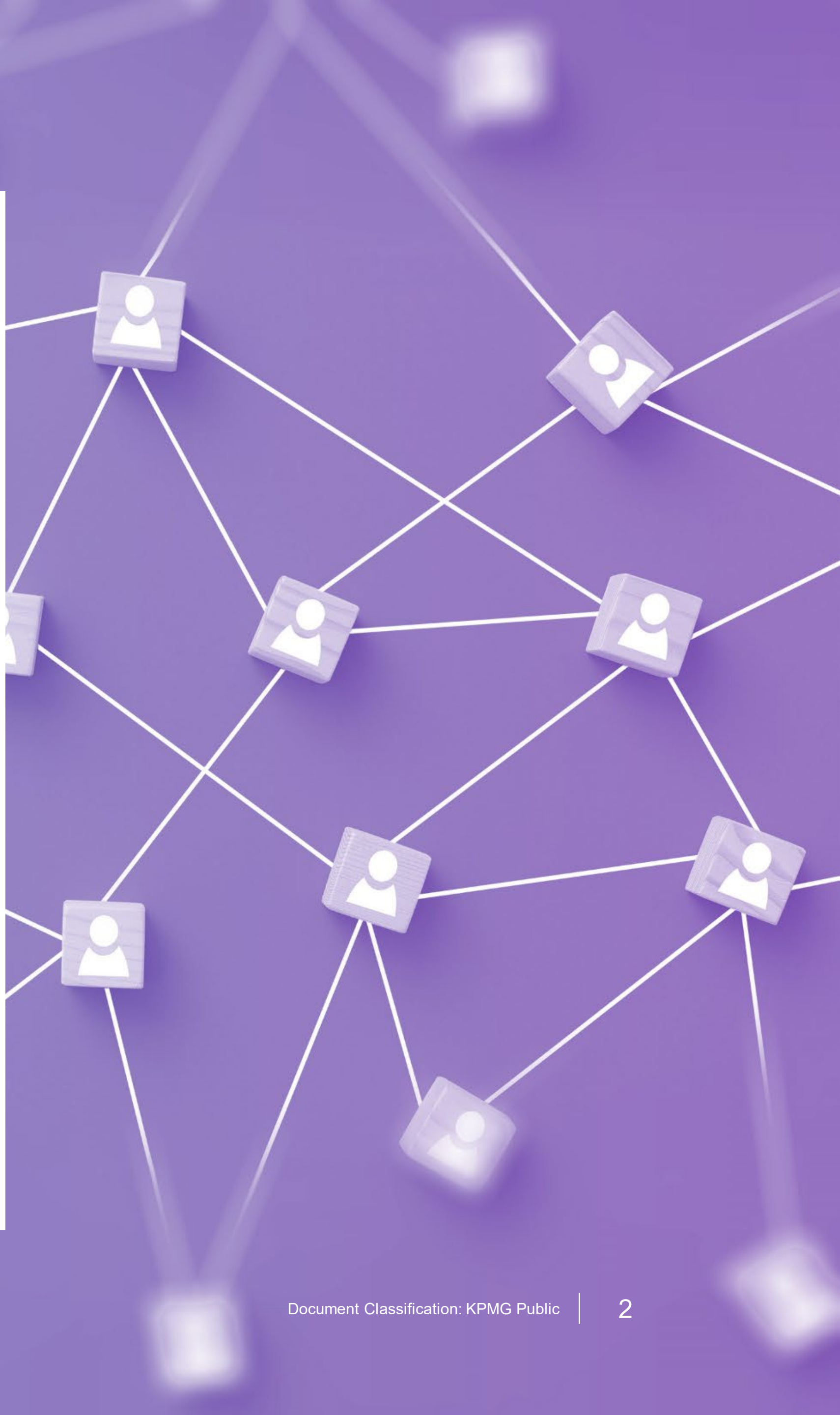

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01

Employment contract vs. B2B contract – key features

Employment Contract

Article 22 of the Labour Code [Employment Relationship]

§ 1. By establishing an employment relationship, an employee assumes the obligation **to perform specific work for the employer and under the employer's direction at a place and time specified by the employer, and the employer assumes an obligation to employ the employee against payment of remuneration.**

§ 1(1). Employment on the terms referred to in § 1 is taken to be based on an employment relationship **regardless of the name of the contract concluded by and between the parties.**

§ 1(2). **A contract of employment cannot be replaced with a civil-law contract based on the conditions of work** referred to in § 1.

Basic characteristics of employment

- Specific type of work
- Diligent performance
- Personal performance of work
- Subordination to the employer
- Designated place and time
- Paid work

What is the B2B Model?

The B2B model (business to business) is a form of cooperation based on a civil law contract concluded between two professional entities – entrepreneurs (the client and the service provider).

Entities entering into a B2B contract have the freedom to shape its content. The rights and obligations of the parties arise from their mutual arrangements, with the limits being the principles of social coexistence, the nature of the legal relationship, and compliance with the law.

SELF-EMPLOYED / CONTRACTOR

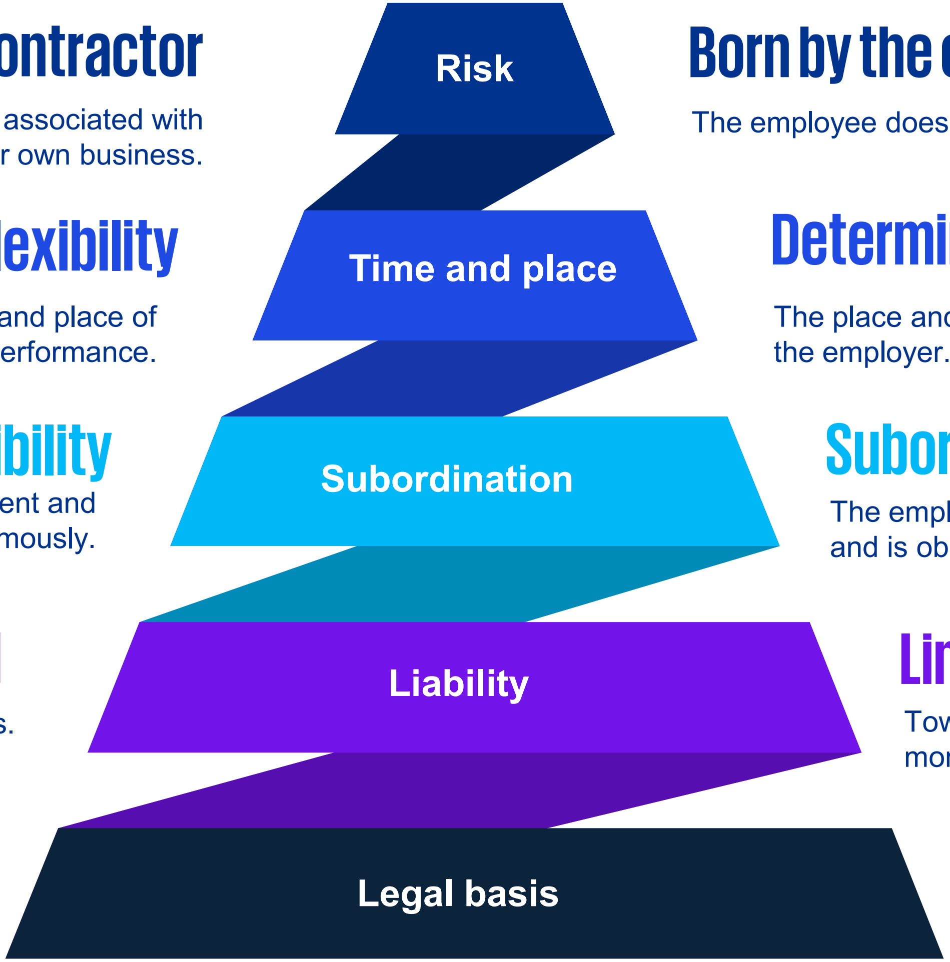
a natural person running a sole proprietorship, registered in the Central Register of Business Activity, not employing others

Contractor
(**self-employed**”)

services

Usługobiorca
(company or other entity)

B2B vs. Employment Contract



Born by the contractor

The contractor bears the business risk associated with running their own business.

Born by the employer

The employee does not bear business risk.

Flexibility

The contractor decides on the time and place of contract performance.

Determined by the employer

The place and time of contract performance are set by the employer.

Freedom and flexibility

The contractor is independent and organizes their tasks autonomously.

Subordination

The employee is subject to the employer's authority and is obligated to follow instructions.

Unlimited

Towards the client and third parties.

Limited

Towards the employer, up to the amount of three months' salary (except in cases of willful misconduct).

Civil Code

Provisions on mandate contracts / service contracts.

Labour Code

Provisions of the Labour Code and other labour law regulations.

02

Key areas of the B2B model

Key areas of the B2B model(1/2)

Contractor's Independence

The contractor operates independently and is not subject to direct instructions from the client.

The client may issue non-binding guidelines.

No subordination

Time & place

Contractor's Freedom

In principle, the contractor decides on the place and time of service delivery.

Restrictions on this freedom may be introduced if they arise from the nature of the services (e.g. requiring presence at a specific place and time).

However, such restrictions must not resemble those applicable to employees.

Generally Unlimited Liability

The contractor's liability is generally unlimited.

Contractual limitations of liability may be introduced.

Liability

Tools & costs

Own Tools

As a rule, the contractor uses their own tools and resources to perform the contract and bears all costs related to running their business.

If the client provides tools or resources, this should be done for a fee.

Key areas of the B2B model(2/2)

Contractor's Rights

The contractor does not have rights arising from labour law (e.g. protection against dismissal, paid leave, sick leave, severance pay, etc.).

The rules for terminating a B2B contract (including notice period) are freely determined by the contract.

Rights

Termination of the contract

Scope and Manner of Service Delivery

Precise Definition of Services

A B2B contract should clearly define the services to be provided by the contractor.

The scope of services should not mirror the duties of full-time employees.

The contractor should perform tasks in a manner different from that of regular employees.

External Entity

The contractor operates as an independent business entity and is not part of the client's internal organizational structure.

The contractor should not hold a formal position within the organization.

Contractor's Position in the Structure

Function

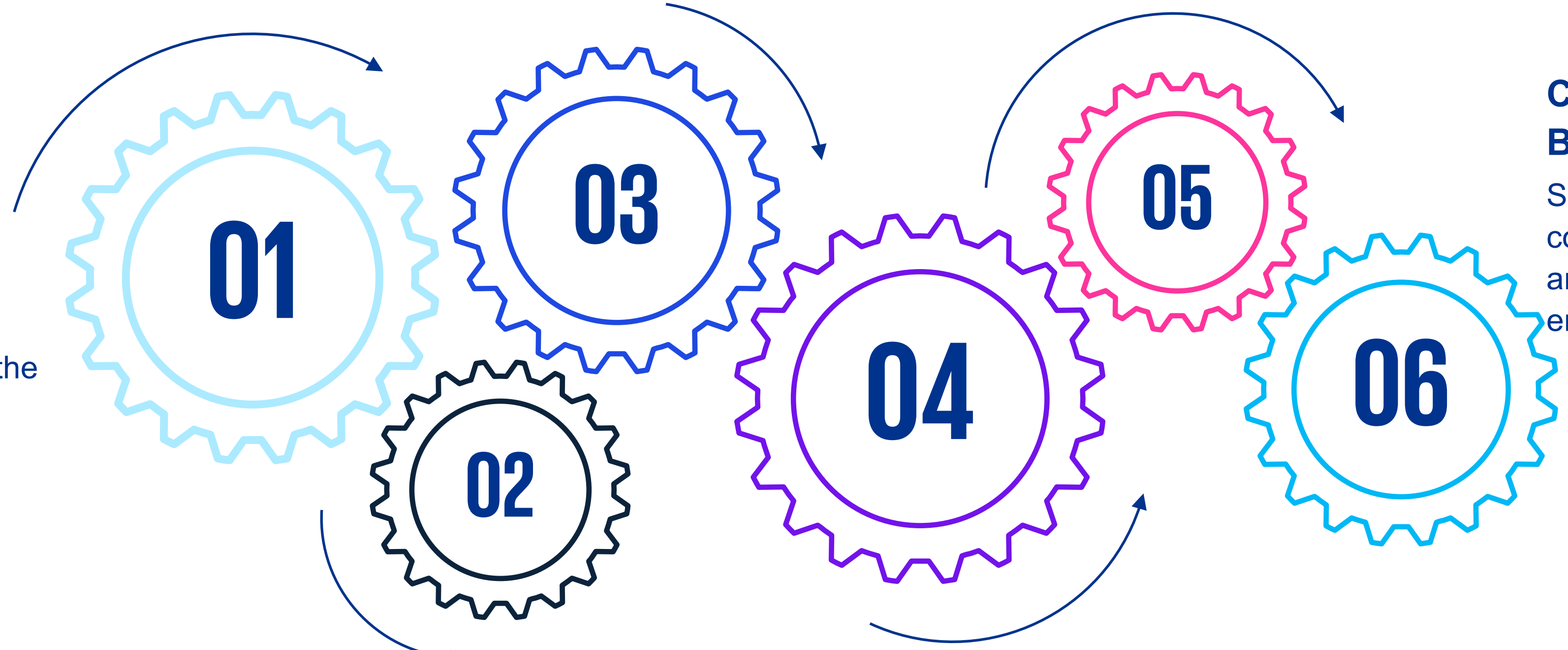
Break in Service Delivery

Temporary Suspension of Services

The contractor is paid for specific services completed in accordance with the contract.

The B2B contract may include provisions regarding breaks or suspension of service delivery, specifying the circumstances and conditions under which the contractor may temporarily stop performing tasks.

Other important areas in the B2B model



Recruitment and Onboarding

Should be tailored to the specifics of B2B cooperation

Remuneration Rules

Can be flat-rate, hourly, or project-based.

Side Activities and Non-Compete Clauses

The contractor should be allowed to work with other clients.

Reporting

Should not resemble employee-style reporting.

Performance Evaluation and Promotions

The contractor is not subject to annual performance reviews or promotions like employees.

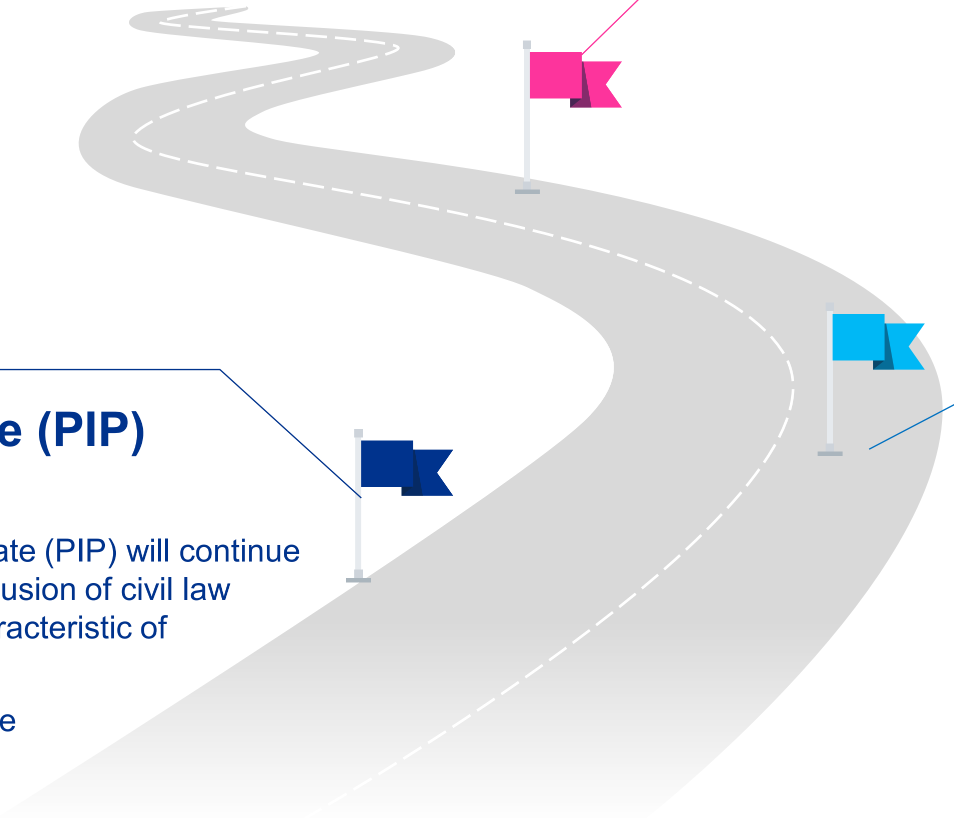
Communication Between the Parties

Should not mirror the communication style between an employer and an employee.

03

Reclassification of civil law contracts – perspectives

Reclassification of civil law contracts – what does the future hold?



Platform Directive

This will generally apply to individuals working via digital platforms.

A presumption of the existence of an employment relationship is to be introduced.

Announced Legislative Changes

In January 2025, work was announced on legislation aimed at increasing the powers of the Labour Inspectorate, particularly granting the right to reclassify civil law contracts as employment contracts.

Labour Inspectorate (PIP) Control Program

The National Labour Inspectorate (PIP) will continue inspections related to the conclusion of civil law contracts under conditions characteristic of an employment relationship.

A total of 55,000 inspections are planned for 2025.

04

Challenging the civil law relationship

Who can request reclassification of a civil law contract?

01 Contractor

If the contractor considers the B2B relationship to be an employment relationship, they may file a lawsuit to establish the existence of an employment relationship or to claim employment-related benefits.

02 National Labour Inspectorate

If National Labour Inspectorate considers the B2B relationship to be an employment relationship, it may also file a lawsuit to establish the existence of an employment relationship.

03 Social Security and Tax Office

Social Security may issue a decision stating that the contractor is subject to mandatory social insurance contributions.

The Tax Office may issue a decision requiring the payment of personal income tax (PIT) advances.

What elements are subject to examination?

- Contract and other formal documents
- Actual manner of contract execution

Consequences of Challenging a B2B Contract

The risk of reclassifying a civil law contract as an employment contract may involve numerous consequences

Taxes and Social Security Contributions

Obligation to pay outstanding social security contributions based on the employee's salary for up to 5 years retroactively.

Risk of having to pay outstanding personal income tax (PIT).

Misdemeanor Liability

A fine ranging from PLN 1,000 to PLN 30,000

Employee Claims

The employee may pursue employment-related entitlements, such as paid vacation leave, compensation for unused leave, overtime pay, severance pay, etc.

KPMG Law

Wojciech Kwiatkowski
Associate Director
Labour Law Practice

T: +48 22 528 13 00
M: +48 605 511 308
E: wkwiatkowski@kpmg.pl

Renata Kulpa
Counsel
Attorney-at-Law

M: +48 603 988 902
E: rkulpa@kpmg.pl

Anna Panek
Associate
Attorney-at-Law

M: +48 728 934 921
E: apanek@kpmg.pl

Antonina Zemska
Junior Associate
Attorney-at-Law Trainee

M: +48 664 080 139
E: azemska@kpmg.pl

野村　雅士
Masashi Nomura
Director,
Japanese Desk

M: +48 604 496 342
E: mnomura1@kpmg.pl

KPMG Poland

kpmg.pl

Poland – B2B structure
ポーランドにおけるB2B契約 (個人税・社会保障)

2025年6月26日

B2B Contract

- In Poland, individuals can set up an individual business activity and, within its frames, render certain types of services (from tax point of view excluding managerial services) for the benefit of the company/ies.
- Any individual business activity needs to be registered in the Polish Business Activity Central Register and Information Record, with an option to do it online.
- According to the general definition provided by Entrepreneurs Act, business activity shall mean organized gainful activity carried on in one's own name and in an uninterrupted manner.
- An entrepreneur is liable with all their assets for obligations arising as a result of running business activity.
- Cooperation based on a B2B contract falls under Civil Law, hence no regulations of Labour Law are applicable to independent contractors.
- Services within individual business activity may be provided even if some of them were previously rendered by the individual under an employment contract or other type of relationship. Nevertheless, the form of cooperation between the parties needs to be changed.

Lack of Benefits Applicable to Employees

- No paid holidays
- No remuneration for non-fulfilment of the obligations due to sickness or other emergency
- Responsibility for damages caused to the Company or Company’s clients
  (as a rule, individuals conducting business activities are subject to unlimited liability)
- Lack of tax reliefs, which may be applicable only to employees
  (e.g. exemption of the value of training)
- Termination rules are based only on the provisions of a B2B contract

Taxation of income

A self-employed individual is obliged to independently settle taxes related to their individual business activity and the Company does not have any remitting obligations in this respect.

In accordance with Polish regulations, income from individual business activity may be taxed in Poland using different rules, namely:

- Tax scale - general rules (progressive tax rate - 12%/32%) on income (revenue less tax deductible costs), 32% triggers above PLN 120000 per year
- 19% Flat-rate tax on income (revenue less tax deductible costs)
- Flat-rate tax on registered revenue with rates varying from 2 to 17%. **NO** tax deducible costs under this regime. Most popular rates are: 8,5% or 12 % (for certain IT), 15% (advisory services) and 17% (for highly skilled professions like lawyers, tax advisers, chartered accountants, brokers, certified investment advisors etc).
- **The spendable net income under B2B is in most cases much higher than from the employment**

Social Security

Based on the entry into the Business Activity Central Register and Information Record, the entrepreneur is registered with the Polish Social Insurance Institution.

The individual as a rule is obliged to pay monthly contributions for ZUS insurance (retirement, disability, and accident coverage), the Labour Fund, the Solidarity Fund, and health insurance. However, the sickness insurance contribution is voluntary. Under certain circumstances (having other title for ZUS insurance) only health insurance is due (in each case).

The self-employed individual is obliged to pay social security (if applicable) and health insurance contributions independently and to indicate monthly contributions in the ZUS DRA declaration.

Social security & health insurance

As a rule, **the basis for calculating contributions for social insurance and the Labour Fund for the individual running a business is the declared amount (not actual income),** equal to or higher than 60% of the forecast average monthly remuneration, adopted to determine the amount of the reduction of the annual contribution base. In 2025, it is

PLN 5 203.80

The total monthly social security contributions in 2025 (inc. sickness insurance) amount to PLN 1773.96 (EUR 417).

The basis for the health insurance contribution for 2025 depends on the way how PIT is settled.

For 12/32% progressive tax scale: it is 9% of the base (income), but monthly base in 2025 could not be lower than PLN 3499.55.

For 19% flat rate tax it is 4.9% of the base (income), but monthly contribution could not be lower than PLN 314.96

For flat rate tax is fixed,:

a. For annual revenue below PLN 60,000, it is PLN 461.66 per month
b. For annual revenue between PLN 60,000 and PLN 300,000, it is PLN 769.43 per month
c. For annual revenue exceeding PLN 300,000, it is PLN 1,384.97 per month

Risks related to remuneration structure

NON-COMPLIANCE RISKS

Personal responsibility to calculate and pay social security contributions	Personal responsibility to calculate and pay income tax	Personal responsibility to calculate and pay value-added tax
Obligation to submit additional forms, for example JPK VAT-7, social security forms	Dealing with all formalities with regard to setting up and running business activity (e.g. filing update documents in case of a change of address)	Obligation to archive the documents, for instance issued invoices

To reduce the non-compliance risk – the professional accountant support my be required.

Documentation vs. Practice

The application of B2B remuneration structure should be supported with relevant records (especially in respect of former employees), proving that the current form of cooperation differs from employment relationship.

From the Company’s and the individual's perspective it is of key importance to collect all documents confirming that the services were in fact provided and the fee resulting from the service contract was not paid for any other duties.

Notwithstanding the above, it should be remembered that during the verification of any alternative remuneration structure, Polish tax authorities may assess not only the records kept but also the actual form of cooperation, which has been implemented. In case of any discrepancies between the documents and the actual relationship, the tax or social security implications would stem from the actual form of cooperation (under the ‘substance over form’ rule).

Comparable table of B2B and Employment

Please note that this slide is prepared for structural understanding in very high level. Actually there are a lot of exemptions and complex rules not mentioned here.

	Employment		B2B
	Employee	Employer	
Income Tax	-30,000: 0% -120,000: 12% -1,000,000: 32% 1,000,000- 32+4%	-	1) Progressive method on income 2) 19% of income 3) 2-17% of revenue
Social Security			Calculated based on the based amount issued by Ministry of Labour. Maximum 21,287.52
Pension*	9.76%	9.76%	
Disability*	1.5%	6.5%	
Sickness	2.45%	-	
Accident	-	0.67-3.33%	
Guaranteed Benefit F	-	0,1%	
Additional Retirement F	-	1.5%	
Labour F	-	2.45	
Health Insurance**	9.0%	-	1) 9% of income 2) 4.9% of income 3) -60,000 : PLN 5,539.92/y -300,000 : PLN 9,233.16/y 300,000 : PLN 16,619.64/y

*Annual Cap: 260,190 (for 2025)

**Employee's portion of Pension and Disability is deducted from the calculation base.

ご清聴有難うございました。

Arkadiusz Gliniecki
Tax Director
E: agliniecki@kpmg.pl
M: +48 604 919 892

Masashi Nomura
Director, Japanese Desk
E: mnomura1@kpmg.pl
M: +48 604 496 342

KPMG Poland

kpmg.pl