

# GMS Flash Alert

2020-461 | November 18, 2020



## Czech Republic – Court Treats Foreign Employee as Contract Employee

The Supreme Administrative Court (SAC) has clarified the definition of contract employees and foreign employees under the Czech Sickness Insurance Act.<sup>1</sup> The distinction between these two categories of employees working in the Czech Republic is important for social security contributions purposes.

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### WHY THIS MATTERS

In the case of both foreign employees and contract employees, the employer may be an entity established in a non-treaty state (meaning all states except for European Union (EU) and European Economic Area (EEA) member states, Switzerland, and states with which the Czech Republic has concluded a social security agreement). However, only contract employees are subject to compulsory social security contributions in the Czech Republic under sickness insurance legislation; thus contributions must be paid by the Czech company (the contract employer) to which the contract employees have been posted. Foreign employees – those who are active in Czech territory for the benefit of a foreign employer from a non-treaty state – are excluded from compulsory sickness insurance in the Czech Republic.

Companies with employees working in the Czech Republic whose legal employer is in a non-treaty country need to understand their social security contribution obligations in the Czech Republic with respect to these two classes of employees.

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### Details

In the case in question, the SAC addressed the obligation to pay social security contributions for the employees of a foreign employer established in Jersey (a non-treaty state). The employees provided management services to a Czech company in the territory of the Czech Republic under contracts for the provision of services.

The employees had originally worked in managerial positions at the Czech company under employment relationships

concluded under the Czech Labour Code. Their employment contracts with the Czech company were then terminated, only to be formally re-concluded with a company having its registered office in a non-treaty state (Jersey). Because of this, the employees were considered foreign employees. As a result, they ceased to be subject to compulsory social security contributions in the Czech Republic. However, their job positions and actual job descriptions remained unchanged: they continued to work for the Czech company as they did before the termination of their original employment contracts.

Following an inspection at the Czech company, the District Social Security Administration (DSSA) decided in an administrative procedure that these employees did not meet the definition of foreign employees but were in fact contract employees, as they worked for the benefit of the Czech company and were therefore subject to compulsory social security contributions in the Czech Republic. The contributions were to be paid by the Czech company, which, in DSSA's assessment, met the definition of a contract employer. Coming to the same conclusions as both the administrative authority and the regional court, the SAC dismissed the cassation complaint filed by the Czech company.

The SAC stated that although for both categories of employees, the employment relationship is with a foreign employer from a non-treaty state – the difference is that for a foreign employee there is no Czech entity (besides the foreign employer) to which the employee would have a close inner link (economic, organisational).

In contrast, a contract employee has a certain link with a Czech entity, although there is no formal employment relationship. This entity is then a contract employer.

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## KPMG NOTE

In the light of the above SAC conclusions, if employees whose legal employer is in a non-treaty country are working at your company in the Czech Republic, we recommend checking the factual nature of the arrangement from the perspective of the legal obligation to pay social security contributions in the Czech Republic.

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## FOOTNOTES:

- 1 Sick Insurance Act No. 187/2006 Coll.
- 2 [Decision](#) of the Supreme Administrative Court No. 9 Ads 104/2018 (21 October 2020) (in Czech).

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## Contact us

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