



## The Artists' Social Security Insurance Levy – A Brief Summary

Artists' Social Security was introduced in 1983, integrating self-employed artists and publicists into the statutory social security system. Exceptionally under this provision, artists and publicists pay only around half of their contributions themselves and are therefore in a similarly advantageous position as employees. The other half of contributions is financed via a Federal Government subsidy and a levy paid by companies which utilise artistic or written works. The introduction of the Artists' Social Security Fund means that any utilisation of artistic or written works by a company may attract social security contributions. The levy for artists' social security is payable on the utilisation of any artistic or written works created on a self-employed basis.

### Who is liable to pay the levy?

Private companies and enterprises may be liable to pay the levy, as may public corporations, institutions, registered associations and other partnerships. Recognised charitable status under tax law does not affect the liability to pay the artists' social security levy. Liability applies particularly to companies which typically act as users of artistic or written works or services. This includes, for example:

- Publishers and press agencies
- Theatres, orchestras and choirs
- Theatre, concert and touring theatre agencies
- Radio and television providers
- Manufacturers of image and sound carriers
- Galleries and art traders
- Advertising agencies
- Variety show and circus companies
- Museums
- Training and educational institutions for artistic and written work.

The name of the enterprise is irrelevant and the levy may apply if the company also carries on activities other than the aforementioned. Activities are interpreted broadly and may also apply to companies or institutions whose work is merely of a similar character.

Companies **that undertake advertising for themselves** are also liable to paying the levy unless they commission self-employed artists and publicists only on an occasional basis. This means that practically all sales-oriented companies are included in the group of those liable to pay the levy pursuant to the Artists' Social Security Act (*Künstlersozialversicherungsgesetz – KSVG*).

Finally, any entrepreneur may become liable to pay the levy if, on more than an occasional basis, artistic or written works created on a self-employed basis are commissioned for any purpose of the enterprise and with the aim of achieving income (**blanket clause**). Public events are deemed to be taking place on more than an occasional basis if more than three events are performed in one calendar year.

The following applies to all orders placed **after 01.01.2015** in the context of **company advertising** or under the **blanket clause**: Commissioning is deemed to be occasional only if the total sum of all remuneration paid in one calendar year does not exceed **450 euro**. Where the number of events is relevant to the duty to pay the levy under the blanket clause the number of events must be checked irrespective of the 450 euro rule.

Self-employed artists or publicists also may be deemed entrepreneurs subject to paying the levy if they use or market the artistic or written works or services of third parties. You'll find more information on this in the information sheet "Information on the artists' social security levy".

### What is the rate of the levy for Artists' Social Security?

For 2015 and 2016 the levy was raised to 5.2%, 2017 the levy is about 4.8%. All payments made by a liable entity to self-employed artists and publicists in the course of a year are totalled and multiplied by the levy rate, which is set every year. This results in the total levy for artists' social security payable for the year in question. Note that all **expenses and ancillary costs** which are reimbursed to an artist or publicist, e.g. for materials, transport, phone charges and non-artistic ancillary services, are included in the calculation. Separately charged VAT, tax-free compensation for expenses (e.g. travel and catering costs) up to the tax thresholds (see Info 10) and the so-called "*Übungsleiterpauschale*" (income tax exemption for ancillary occupations under certain circumstances pursuant to Section 3 No. 26 of the German Income Tax Act) do not need to be included in the calculation.

## How does the Artists' Social Security Insurance Scheme work?

All companies who work with artists and publicists and belong to the group of entities liable to pay the levy must register with the Artists' Social Security Fund (*Künstlersozialkasse* – KSK) without special request. This is a **statutory registration duty**.

The law stipulates that enterprises must record all remuneration paid to artists and publicists in the course of a year, including expenses and ancillary costs. The Artists' Social Security Fund must be informed of the total amounts by 31 March of the following year. The Artists' Social Security Fund sends out a specific notification form for this purpose. The previous year's figures are used by the Artists' Social Security Fund to calculate monthly payments on account for the current year (one twelfth of the total of remuneration of the previous year multiplied by the current levy rate).

Companies who register with the Artists' Social Security Fund for the first time and have been active for some time are obliged to pay the levy for artists' social security retrospectively. The Artists' Social Security levy is charged retrospectively for a period of five years. Where immediate payment of the outstanding amount is not possible an application for deferred terms, e.g. payment in instalments, may be submitted. Persons who deliberately fail to register and wait until detected by the Artists' Social Security Fund may be liable to paying retrospective levies which go beyond the five-year period. In addition, the law imposes a fine of up to 50,000 euro for enterprises who fail to comply with their duty to register.

### Which figures need to be recorded?

All remuneration paid to self-employed artists or publicists for artistic or written services must be recorded and notified to the Artists' Social Security Fund. In addition, payments to artists and publicists who act on the market as businessmen, sole traders or partnerships (e.g. *GbR*/civil law association) must be included in the basis for calculation. In addition to all remuneration payments, licences etc. all expenses and ancillary costs are subject to the levy.

An **artist** in terms of this law is defined as anybody who creates, practises or teaches music, visual or performing arts.

A **publicist** is defined as anybody who works as a writer, journalist or in a similar manner in the media or publishing context, or who teaches journalism or mass communication media. For a list of typical artistic or writing/publishing activities please refer to our Information Sheet No. 6.

**Self-employed** in this context means that the artist/publicist works on a freelance basis, i.e. is not employed by the company. This may be in the context of an ancillary occupation alongside a main occupation e.g. as an employee, civil servant or student. Whether the recipients of the payments are insured in accordance with the KSVG is not relevant. Payments to non-insured persons must also be recorded and notified, such as payments to artists and publicists abroad.

### Unequivocal contracts are important

In the case of bilateral contracts the question of who is to pay the artists' social security levy is unproblematic: any liable company which concludes a contract with an artist or publicist for artistic or written services must notify the Artists' Social Security Fund of the remuneration including all ancillary costs.

However, where more than one person is involved in the contractual arrangements the question of who is liable to pay the artists' social security levy may arise. In order to determine who is liable in the individual case the agreements under civil law, i.e. the contractual agreements, are decisive. The liability to pay the levy falls on the enterprise which has a direct contractual relationship with the artist. This is usually the enterprise which has asked the artist to provide the artistic services and which would, if the case arose, be able to sue for the same, and against which the artist may assert and enforce his or her claims.

Representatives of artists or publicists (e.g. agents or managers) are liable to pay the artists' social security levy unless they can prove that the party which enters into contract with the artist or publicist operates an enterprise which is liable to pay the levy, is registered with the KSK with a levy identification number and has notified the KSK of the appropriate remuneration.

Correct settlement of the artists' social security levy is therefore another important reason for the conclusion of unequivocal contractual agreements and their appropriate application in practice. However, note that a contract cannot stipulate who is to be liable to pay the artists' social security levy to the Artists' Social Security Fund. The liability to pay is determined exclusively by statute.

More information about the Artists' Social Security Fund, the levy on Artists' Social Security and Artists' Social Security is available online at [www.kuenstlersozialkasse.de](http://www.kuenstlersozialkasse.de). The website contains detailed and sector-specific information; this can also be requested in paper format from the Artists' Social Security Fund.

## Your *Künstlersozialkasse* – The Artists' Social Security Fund