

Flash fiscal / Tax flash

Changes to the Social Security Contributions Code - 2011 State Budget

January 3, 2011

The State Budget includes changes to the Social Security Contributions Code. The changes include the postponement until 2014 of certain provisions, clarification of definitions or regimes whose interpretation was unclear and changes in the regime for self-employed workers. We summarize below the highlights of the changes.

General system for employees

Postponement to 2014

- The provisions for different employers' contribution rates, depending on the type of work contract, were postponed until 2014. This deferral includes the increase of the contribution rate by 3 percent for fixed term employment contracts and the reduction of the contribution rate by 1 percent for permanent employment contracts.
- Other rules that will not be in force before 2014 and only after specific regulation, relate to contributions on: (i) amounts granted to employees under company profit sharing schemes, (ii) amounts spent by employers, on behalf of the employee, to purchase financial products such as life insurance, pension funds, when they are redeemed before full maturity; (iii) premiums related to the company's financial performance.

Clarifications

a) Personal use of a company vehicle:

The payment of social security contributions on the personal use of a company vehicle will occur in limited cases, dependent on a formal written agreement between the worker and the employer which must include:

- The allocation of a specific vehicle to the employee or director;
- The operating expenses and the cost of vehicle being borne by the employer;
- Written acknowledgment of the possibility that the vehicle can be used for personal matters or 24 hours a day. An exception is made, if the employee is exempted from formal work hours.

Social security contributions will also be due on the cost of providing the vehicle in any case when the agreement allows the usage of the vehicle on rest days. Contributions will not be due in months when the employee worked on at least 2 days of his/her of mandatory weekly rest days, or on 4 days of his/her weekly or additional rest days.

The social security taxable basis will be 0,75% of the acquisition cost of the vehicle per month.

b) Travelling expenses:

Travelling expenses covers payments, in cash or other, borne by the employer to pay travel costs of employees other than on by company transport or that exceed the cost of a public transport monthly pass; or, in the absence of such pass, the cost that would result from using public transport. This will only apply if the expenses are of a general nature;

c) Representation expenses:

The social security contribution basis takes into account the amounts effectively due as representation expenses, if they are fixed in advance and to the extent that they were not accounted for as valid expenses before year end;

d) Gratuities/tips:

Social security contributions will be due on the total amount of gratuities attributed by virtue of contract or work conditions, even though such payments may be conditional on satisfactory work performance. Gratuities are also considered to include amounts that by their amount and their permanent and regular nature, should be considered by custom as an integral part of compensation;

e) Regularity:

For social security purposes remuneration is considered to have a recurring nature, when it is established in advance subject to objective and general criteria, even if conditional, but in such a way that a employee expects to receive it independent of the frequency with which it is granted.



Increase of exemption limits for expenses provided for in collective agreements

- The exemption limits on compensation components defined in the personal income tax code, are increased by 50% if provided for in a general collective agreement. These include per diem allowances, compensation for termination of a work contract by agreement if the employee has a right to an unemployment subsidy, etc;

Progressive adjustment to contribution basis

- The new components will be effective in 2011, as provided for in the initial version of the Code, but will be implemented progressively: 33% in 2011; 66% in 2012 and 100% in 2013.

Exclusion from the contribution basis

- Compensation for the termination of a work contract will be excluded from the contribution basis if it is due to a collective dismissal, or the elimination of the position, to inability of the worker to perform the job, to expiry of the work contract, for termination by the employee, or in lieu of notice.

Obligations of the employers

- The employers must inform the social security authorities of the engagement of employees: (i) 24 hours before the beginning of the effects of the labor agreement; (ii) 24 hours after the beginning of the activity, in exceptional cases when, because of short term agreements or shift work, the communication could not be made at the due time.
- If the communication referred above was not made, and if the employee is receiving unemployment subsidy or sick subsidy, it is considered that the work has begun when these subsidies started to be paid, and the employers is jointly responsible for the reimbursement of the amounts unduly received by the employees.
- The employer can avoid this responsibility by proving the effective date of the beginning of the work.

Banking Sector

- Employees registered in “Caixa de Abonos de Família dos Empregados Bancários” and covered by employment collective instrument regulation will be transferred to the general regime of social security, for the purposes of providing old-age and maternity/paternity benefits.
- Eventualities such as professional sickness and unemployment are still covered by the collective instrument regulating the employment.
- The contribution rates will be 26,6%, 23,6% paid by the employer and 3% by the employee. For entities with no commercial scope the contribution rate is 25,4%, 22,4% paid by the employer and 3% paid by the employee.

Revocation

- Decree-law n° 299/86, de 19 de September, relating to incentives to the employment of handicapped employees was revoked.

Self-employed regime

Employer's contribution base

- The social security taxable basis was changed from 70% of the total amount of each service rendered to the total amount of the services rendered during that respective civil year.

Employer's obligation

- The new 5% contribution rate due by employers will only be applied if 80% or more of the amount of rendered services is for the same company, or for the same person with a business activity, or to the same Group;
- Services rendered to any company of the same group are considered rendered to the same employer.
- The employers' obligation will arise when the Social Security authorities calculate the amount of services rendered and will result in the payment of the respective contribution. In this case, the inspection services of the "Labor Conditions Authority" (Autoridade para as Condições de Trabalho) or the "Social Security Institute" (Instituto da Segurança Social) will be notified to investigate the legitimacy of the situation.

Exclusion of Employers' contributions to Social Security

- Contributions to social security by persons paying for professional services are excluded in the following cases (i) attorneys and solicitors who are obliged to contribute to their respective Social security subsystem (ii) workers who are temporarily working in Portugal for their own account and who prove that they contribute to a social security scheme in another country. (iii) workers exempt from social security deductions; (iv) render of services which by legal imposition can only be rendered by a self-employee.

Computation of the income of the self-employed worker

- A new procedure to determine income for a self-employed worker was defined. In general, that income will be 70% of the total amount of services rendered and 20% of income from the production and sale of goods. In the case of workers subject to the organized accounting regime of the personal income tax code, the relevant income corresponds to the taxable profit, if this is lower than that provided for in the general rule. In this case, the minimum limit of social security taxable basis will be the second income bracket.
- The income subject to contribution will be determined by Social Security using the values declared to them.

Self-employee obligations

- Self-employees must inform the social security authorities with respect to the previous civil year: (i) sales total value; (ii) total value of the services rendered to individuals with no commercial activity; (iii) total value of the services rendered to each individual with commercial activity or to each company.

Contribution Rate for self-employed workers

- The current contribution rate for producers or traders (29,6%) will now apply to service providers (formerly 24,6%) and, therefore, will be the same for all self-employed workers.

For further information

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