20-2012
December, 2012

GENERAL STATE BUDGET LAW AND NATIONAL MINIMUM WAGE FOR 2013

As in previous years, **2013 General State Budget Law 17/2012** (the “Budget Law”) has introduced changes in labor and social security legislation.

Royal Decree 1717/2012, of December 28, 2012, establishing the National Minimum Wage for 2013 has also been published.

This Newsletter offers a brief summary of the most significant aspects introduced by these two pieces of legislation.

1. CHANGES MADE BY THE BUDGET LAW IN RELATION TO SOCIAL SECURITY CONTRIBUTIONS

We set forth below the basic changes made in the Budget Law in relation to social security contributions for 2013.

1.1 Maximum and minimum limits to contribution bases

The maximum and minimum limits to contribution bases for all the contingencies under the different social security regimes will be as follows:

- Maximum limit: €3,425.70 per month.
- Minimum limit: the national minimum wage from time to time in force, increased by one sixth.

The following minimum and maximum bases will be applied for all the contingencies under the General Social Security Regime, except for the contingencies of occupational accident and occupational disease:

- Minimum bases: according to occupational category and contribution group, the minimum bases will increase from January 1, 2013, with respect to those in force on December 31, 2012, by the same percentage as the increase in the national minimum wage.

- Maximum bases: irrespective of occupational category and contribution group, the maximum base will be €3,425.70 per month, or €114.19 per day.

1.2 Contribution rates for non-occupational contingencies and overtime under the General Social Security Regime

The 2012 contribution rates for non-occupational contingencies have been maintained: 28.3% (23.6% to be paid by the employer and 4.7% by the employee).

As far as overtime is concerned, the contribution rates have also been maintained: 14% for cases of *force majeure* (12% to be paid by the employer and 2% by the employee) and 28.3% in other cases (23.6% to be paid by the employer and 4.7% by the employee).

1.3 Contribution rates for the contingencies of occupational accident and occupational disease

Final Provision Seventeen of the Budget Law establishes the contribution rates for the contingencies of occupational accident and occupational disease, amending Additional Provision Four of 2007 General State Budget Law 42/2006, of December 28, 2006.

1.4 Contribution by self-employed workers

The maximum and minimum bases under the Special Regime for Self-Employed Workers for 2013 are as follows:

- Maximum base: €3,425.70 per month.
- Minimum base: €858.60 per month.
- The contribution base for self-employed workers who, at January 1, 2013, are aged under 47, will be the base chosen by them between the above-mentioned maximum and minimum bases. Self-employed workers who are 47 years old on that same date and whose contribution base in December 2012 was at least €1,870.50 will also have the same choice.

  Self-employed workers who are aged 47 on January 1, 2013 and whose contribution base is less than €1,870.50 per month, may not choose a base in excess of €1,888.80, unless they elect to do so before June 30, 2013, in which case it will take effect from July 1, 2013, or if they are the surviving spouse of the owner of the business who, as a result of the latter’s death, has had to register as a self-employed worker for social security purposes aged 47, in which event such limitation will not exist.

- Self-employed workers who at January 1, 2013, are aged 48 or over:

  - The contribution base will be limited to amounts ranging from €925.80 to €1,888.80 per month, unless they are the surviving spouse of the owner of the business who, due to the latter's death, takes over the business and registers under the special program for self-employed workers aged 45 or over, in which case they may choose between €858.60 and €1,888.80 per month.

  - In all cases, self-employed workers who, before they reach 50, have paid contributions under any of the social security programs for a period of at least five years, will be governed by the following rules:

    - If the last contribution base evidenced was equal to or less than €1,870.50 per month, they must pay social security contributions on a base ranging from €858.60 to €1,888.80 per month.

    - In the event that the last base exceeds €1,870.50 per month, they will have to pay social security contributions on a base ranging from €858.60 per month to the amount of the last base, increased by 1% and may, in the event that this is not reached, choose a base of up to €1,888.80 per month.

The contribution rate under the special program for self-employed workers will be 29.80% or 29.30% if the person concerned participates in the protection system for self-employed workers who cease trading. Where the self-employed worker is not covered by temporary incapacity protection the contribution rate will be 26.50%.

In the case of occupational accidents and occupational diseases, the percentages in the table of premiums included in Additional Provision Four of 2007 State Budget Law 42/2006, of December 28, 2006, as amended by Final Provision Seventeen of the Budget Law, will apply.

Self-employed workers who are not covered by the protection afforded for contingencies arising from occupational accidents and occupational diseases will pay an additional contribution equal to 0.10% of the chosen contribution base to finance risk benefits during pregnancy and breastfeeding.

1.5 Contributions for unemployment, Wage Guarantee Fund (FOGASA), vocational training and cessation of trading by self-employed workers

The contribution base for unemployment, the Wage Guarantee Fund and vocational training under all the social security regimes covering these contingencies will be the contribution base for the contingencies of occupational accident and occupational disease.

The contribution base for unemployment in relation to training and apprenticeship contracts will be the minimum base corresponding to the contingencies of occupational accident and occupational disease.

The contribution base for the protection of self-employed workers included in the Special Regime for Self-employed Workers who cease their activity will be whatever base is chosen by the workers included in the regime.

DESEMPLEO	
TIPOS (%)	**SUPUESTOS**
Total: 7,05 ▪ Employer: 5.5 ▪ Employee: 1.55	Permanent contracts, including part-time contracts and permanent contracts for intermittent work. Fixed-term work-experience, training and apprenticeship, hand-over and relief contracts. Contracts with disabled workers, irrespective of their format.
Total: 8,3 ▪ Employer: 6.7 ▪ Employee : 1.6	Full-time fixed-term contracts (not included among the above types of contract).
Total: 9,3 ▪ Employer: 7.7 ▪ Employee: 1.6	Part-time fixed-term contracts.

The 2013 contribution rate for the Wage Guarantee Fund will be 0.20%, and be payable solely by the employer.

In addition, the contribution rate for professional training will be 0.70%, of which 0.10% will be payable by the employee and 0.60% by the employer.

The contribution rate for self-employed workers who cease their activity will be 2.2%.

2. OTHER PROVISIONS OF INTEREST IN THE BUDGET LAW

2.1 Statutory interest rate

Additional Provision Thirty-Nine of the Budget Law sets the statutory interest rate at 4% through December 31, 2013.

2.2 Late-payment interest

Subprovision 2 of Additional Provision Thirty-nine of the Budget Law sets the late-payment interest rate at 5% through December 31, 2013.

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2.3 Public Multi-Purpose Income Indicator (IPREM) for 2013 (Additional Provision Eighty-Two of the Budget Law)

In relation to the 2013 IPREM, created with a view to replacing the national minimum wage in order to determine the amount of certain benefits or the conditions to qualify for certain public services or benefits, the amounts established for 2012 remain unchanged:

- Daily: €17.75
- Monthly: €532.51.
- Annual: €6,390.13.

Where the IPREM has replaced the national minimum wage, the annual amount will be €7,455.14, unless the provision in question, when referring to the national minimum wage calculated on an annualized basis, expressly excludes special payments (*pagas extraordinarias*), in which case the annual amount of the IPREM will be €6,390.13.

2.4 Reduction in social security contributions in cases where there is a change of position due to risks during pregnancy or breastfeeding, as well as in cases of occupational disease

Additional Provision Seventy-Seven of the Budget Law keeps unchanged the reduction in social security contributions where due to a risk during pregnancy or breastfeeding, the employee is assigned a different position or function that is compatible with her condition. While she remains in her new position or function, a 50% reduction in employer social security contributions for non-occupational contingencies will be made to contributions accrued.

The same reduction will be applicable, on such terms and conditions as may be determined by regulations, in cases where, due to an occupational disease, there is a change in position within the same company, or a change to a job in a different company that is compatible with the worker’s condition.

2.5 Deferral of application of Additional Provision Thirty of Law 27/2011, of August 1, 2011, Updating, Adapting and Modernizing the Social Security System

The Budget Law defers the application of Additional Provision Thirty of Law 27/2011, of August 1, 2011, which required the Government to take the appropriate measures by way of regulations to ensure that the amount of the widow’s/widowers’ pensions for pensioners aged 65 or over and not receiving any other public pension is equivalent to the result of applying 60% to the respective computation base.

2.6 Deferral of application of Additional Provision Fifty-Eight of the General Social Security Law

The extension of coverage for occupational accidents and occupational diseases envisaged by Additional Provision Fifty-Eight of the General Social Security Law is deferred for one year. According to this Additional Provision, effective January 1, 2013, protection against the contingencies of occupational accident and disease was going to be included as part of the mandatory protection afforded by all of the programs of which the social security system is comprised with respect to new hires registered under any of those programs as from that date.

Until then (that is, until January 1, 2014), the legal regime in force at December 31, 2012 will remain in force.

2.7 Deferral of application of Final Provision Ten of Law 27/2011 which, in turn, amends Law 20/2007, of July 11, 2007, approving the Self-Employed Work Statute

The entry into force of Final Provision Ten of Law 27/2011 which, in turn, amends Law 20/2007 is deferred for one year, in order to expressly regulate the potential existence of part-time self-employed work.

2.8 Amendment of Law 9/2009, of October 6, 2009, Extending Paternity Leave

The entry into force of the Law extending the duration of paternity leave in cases of birth, adoption and fostering to four weeks is deferred until January 1, 2014.

2.9 Financing of professional training for employment

The Budget Law provides that a credit will be granted to employers for ongoing training initiatives pursuant to chapter II of Royal Decree 395/2007. To calculate the credit, the following percentages will be applied to the amounts payable by the employer for professional training:

NO. OF EMPLOYEES	PERCENTAGE
1 to 5	A credit of €420 will be available
6 to 9	100%
10 to 49	75%
50 to 249	60%
250 and over	50%

Employers who open new workplaces in 2013 can also qualify for a training credit, as can newly-formed enterprises if they hire new workers, as provided for in the Royal Decree. In such cases, employers will have a credit in the form of reductions in social security contributions, the amount which of will be the result of applying €65 to the number of new hires.

Employers who give their employees individual time off for training in 2013 will qualify for an extra training credit consisting of reductions in social security contributions, over and above the annual credit to which they are entitled pursuant to the rules determined in the Order of the Ministry of Employment and Social Security. This extra credit earmarked for employers as a whole who give time off for training cannot exceed 5% of the credit allocated in the State Public Employment Service budget to finance the reductions in social security contributions for professional training.

2.10 Association with and adhesion to occupational accident and disease mutual insurance companies

Employers' association with, and self-employed workers' adhesion to, occupational accident and disease mutual insurance companies in the social security system so that the latter manage social security benefits and services pursuant to function attributed to them by article 68 of the General Social Security Law, will remain valid until the entry into force of the legislation updating their legal regime, which is established in Additional Provision Fourteen of Law 27/2011, of August 1, 2011, regulating the Period of Validity and Terms and Conditions of Association and Adhesion.

The above will also be applicable to associations and adhesions formalized on or after January 1, 2013.

During the transitional period established in the preceding paragraphs, associated employers and adhering self-employed workers may terminate early their relationship with the mutual insurance company if there are irregularities in the provision of the appropriate benefits and public services, if the mutual insurance company suffers from a financial shortfall as defined in article 74.1 of the General Social Security Law, or if the precautionary measures envisaged in that article are taken, as established by the Ministry of Employment and Social Security, which will also regulate the administrative procedure for ordering such measures.

2.11 Amendments to the Revised Social Security Law

Final Provision Five of the Budget Law amends several articles of the General Social Security Law, including:

- Article 20.5: the rate of the interest accruing on the principal of the debt to the social security authorities, on the surcharges thereon and on the costs of the procedure to be deferred is modified.

  The interest rate becomes the late-payment interest rate (whereas previously it was the statutory interest rate), increased by 2 points if the debtor is exempt from the obligation to provide guarantees for extraordinary reasons.

- Art. 128.1.a), second paragraph: the period during which the National Social Security Institute has exclusive power to grant a new period of sick leave is 180 "calendar" days.

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2.12 Amendment of article 77 of Law 13/1996, of December 30, 1996, on Tax, Administrative and Labor and Social Security Measures

Final Provision Seven adds a new Subarticle 3 to article 77 of Law 12/1996, dealing with the acquisition and forfeiture of social security contribution reliefs. Accordingly, where, for reasons not attributable to the authorities, contribution reliefs have not been deducted as established by regulations, the reimbursement of their amount may be applied for within three months, reckoned from the date of filing the assessment in which the respective relief should have been deducted. If the application is not made within three months, this right will lapse.

The three-month period referred to in the previous paragraph will start to run from January 1, 2013, where the failure to deduct the reliefs in respect of social security contributions and joint collection items occurred before that date.

If reimbursement is appropriate in this situation but does not occur within three months from the date on which the respective application is filed, the reimbursable amount will be increased by the late-payment interest envisaged in article 28.3 of the General Social Security Law, which will be applied to the amount of the relief relating to the time elapsed from the date of filing the application until the payment proposal date.

2.13 Amendment of article 8 of Legislative Royal Decree 1/2002, of November 29, 2009, approving the Revised Law Regulating Pension Plans and Funds

Pursuant to Final Provision Nine of the Budget Law, the contingency of retirement, for which the corresponding pension plan benefit will be paid, will be deemed to have materialized as soon as the member *"reaches 65"* (until now, the Revised Pension Plans and Funds Law referred to the *"ordinary retirement age"*).

Pension plans may envisage the payment of retirement benefit if the employment of the member in question, irrespective of his/her age, is terminated and he/she becomes legally unemployed in the following cases:

- Death, retirement or incapacity of the employer.
- Extinguishment of the contracting party's legal personality.
- Collective layoff.
- Termination of the employment contract on objective grounds.
- Insolvency.

Until now, the original article only envisaged payment by reason of termination of the employment contract "*due to a collective layoff procedure approved by the labor authorities*."

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3. PROVISIONS RELATING TO PUBLIC SECTOR PERSONNEL

The Budget Law establishes various provisions in relation to public sector personnel. The measures include a 2013 pay freeze, based on current pay at December 31, 2012 (without taking into account the reduction approved by Royal Decree-Law 20/2012) and a bar on contributions to occupational pension plans or collective insurance contracts that include coverage of the contingency of retirement.

The Budget Law also provides that in 2013, public business entities cannot hire new personnel, unless the recruitment relates to job vacancies that were announced in previous fiscal years or are necessary in the context of multi-year programs or plans.

4. NATIONAL MINIMUM WAGE FOR 2013

Royal Decree 1717/2012 establishes the national minimum wage for 2013 for any activities in agriculture, industry and the services sector, irrespective of gender, at €21.51/day or €645.30/month, depending on whether the wage is established daily or monthly. The minimum wage will only include compensation in cash and any compensation in kind cannot reduce its gross monetary amount.

The pay supplements referred to in article 26.3 of the Workers' Statute, and the amount corresponding to the guaranteed increase in time-based pay, in bonus-linked pay or productivity-linked incentive payments will be added to the minimum wage, which will be used as a reference, where applicable, pursuant to the provisions of collective labor agreements and employment contracts.

The minimum wage of domestic employees who work on an hourly basis will be €5.05 per hour actually worked.

Lastly, the increase in the national minimum wage may potentially be offset and absorbed if the annual amount receivable by the worker exceeds €9,034.20. In this regard, it is established that statutory provisions or the provisions of collective labor agreements and arbitral awards will subsist in their own right, with no modification other than that necessary to ensure the receipt of that the above-mentioned amount calculated on an annualized basis.

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