

Royal Decree 708/2015, of July 24, 2015 amending various social security regulations for the application and implementation of law 34/2014

This commentary contains a brief description of the key elements of Royal Decree 708/2015, of July 24, 2015 amending various general social security regulations for the application and amendment of Law 34/2014 on measures regarding the assessment and payment of social security contributions, and amending other legal provisions, published on July 25, 2015 in the Official State Gazette.

Among the new legislation ushered in by this royal decree are the implementation of the direct assessment system for contributions and amendments to the regulations on social security matters mentioned below.

1. General regulations on the registration and listing of companies for social security purposes, applications for inclusions and removals of workers and changes to workers' particulars in the social security system, approved by Royal Decree 84/1996, of January 26, 1996 (RGIASS)

The most newsworthy amendments to the RGIASS are as follows:

- The Spanish social security treasury (TGSS) must be notified of the code of the applicable collective labor agreement when the company is registered (companies that are already registered have six months in which to make that notification), where there is any change to the collective labor agreement code, and where an application for inclusion of a worker takes place, it must be stated which collective labor agreement is applicable to the worker.
- The time limit for notifying changes to particulars related to the registration of the trader, the extinguishment of the company, and applications for removals and changes to workers' particulars in matters related to their registration for social security purposes, has been shortened from 6 to 3 calendar days.
- Applications for the inclusion of workers must be made on the RED system, and the option no longer exists to use special media, such as telegrams, faxes or others differing from the channel made available to the payers (RED system).
- The time period for keeping the filing receipts for inclusion or removal applications, issued by the provincial office of the TGSS has been shortened from 5 to 4 years and the same time limit is provided in relation to the employer's or, if applicable, self-employed worker's, obligation in relation to the documents supporting the trader's registration, formal confirmation of the protection and tariffs set for occupational contingencies and for the temporary incapacity benefit protection, in addition to the registration for social security purposes, applications for inclusions, removals and changes to the workers' particulars.

- If changes to the registered particulars are made outside the time limit, but have an impact on the contributions, it is accepted that they may have retroactive effect to the date on which the changes occur. In these cases, any payable contributions may be claimed, in addition to the right to a refund of any incorrectly made contributions (subject to a four-year time limit).
- Where contributions have been made in respect of persons falling outside the scope of the social system, it is reiterated that these contributions will have no effect whatsoever and that the persons on behalf of whom those incorrect contributions were made, whether they have caused benefits or not, and unless they were paid with malice, will be entitled to a refund, after the deduction, in all cases, of the amount of any benefits determined to be incorrectly received, but the time period has been reduced from 5 to 4 years.

2. General regulations on contributions and assessment of other social security rights approved by Royal Decree 2064/1995, of December 22, 1995 (RGCSS)

The most newsworthy changes to the RGCSS are:

- It is specified how social security contributions and the items collected with social security contributions must be determined, according to the assessment models set out in article 19 of the General Social Security Law (LGSS):
 - In the contribution self-assessment system: the payers of the contribution obligation continue to be required to determine or calculate the contributions, but those payers will have to send the contribution self-assessments to the TGSS electronically, except where the contribution documents relating to each assessment period have to be filed.
 - In the direct assessment system: the contributions have to be assessed by the TGSS, and the contribution payer must request the calculation of the assessment and produce the information required for the assessment (all electronically). Additionally, it will be the TGSS that corrects bases, lowers rates, and applies contribution reductions and relief.
 - In the simplified assessment system: if the application for inclusion of the party with obligations is made within the regulatory time limit, the TGSS will determine the contribution assessment. If their inclusion is requested outside the regulatory time limit, under this system the contributions relating to periods falling after the application was filed will be calculated. In this case it will be the TGSS that corrects bases, lowers rates, and applies contribution reductions and relief.
- The proportional distributions in cases of multiemployment will be carried out at the request of the companies or workers concerned, and take effect from the assessment of contributions in which the evidence of multiemployment is evidenced (except for statute-barred periods).
- Inspection and monitoring powers in relation to assessments and deductions made from contributions are conferred on the TGSS and on other administrative bodies, a task that can also be carried out by the labor and social security inspection authority (ITSS) in exercising its powers. Similarly, the management and the authorized entities may verify the eligibility for, and accuracy of, any offsets and deductions that fall within their

responsibility, where in the assessments the offsets have been applied under the delegated payment procedures provided in the law. For these purposes, the TGSS will send the assessments it has completed to the management or authorized entity, for it to monitor and inspect them.

- The manner and time limits for performing the contribution assessments are implemented, in the self-assessment, direct assessment and simplified assessment systems. This is done as follows:
 - **Self-assessment system:** the self-assessments falling due in the period to which the assessment relates must contain the necessary information for the social security authorities to perform their inspection, collection and protection activities and will be transmitted, electronically or by filing the contribution documents, by the relevant persons to the TGSS.
 - **Direct assessment system:**
 - (i) the contribution payer must apply to the TGSS for it to perform a assessment of their contributions, and produce the information needed to calculate the assessment, which can be done up until the last but one calendar day before the end of the time period (they can ask the TGSS to use the particulars for the previous month);
 - (ii) the assessment will be calculated on the basis of the data in the possession of the TGSS, and the TGSS will apply the deductions and applicable offsets in respect of the amount of the benefits paid under the delegated payment procedure, against the contributions in the same period;
 - (iii) after the TGSS has calculated the assessment, it will issue the electronic payment document and the list of workers within the regulatory payment period;
 - (iv) if the TGSS cannot perform the assessment as a result of insufficient particulars, or because the particulars are not consistent with the law, it will notify the contribution payer of the reason within 48 hours, and that person must remedy this; to do so, he must provide new particulars or rectify the incorrect particulars, so that the assessment can be performed;
 - (v) if the TGSS cannot perform the assessment, it will claim the amount of the contributions owed and, lastly
 - (vi) if the contribution payer applies for rectification or reversal of the assessment, before the last but one day before the end of the time period, his obligations would be determined to be performed if any of the following events occurs: 1. if a new contribution assessment can be made within the regulatory period after applying for it and notifying the necessary particulars; 2. where a new assessment cannot be made within that period for reasons attributable solely to the authorities; or 3. if, within the payment period, the payer applies for rectification of clerical, arithmetical or calculation errors in the assessment made, which are attributable solely to the authorities, and the new assessment in which those errors are corrected is made outside the time limit.

- **Simplified assessment system:** the TGSS will make the assessment without the need for a prior application by the payer. It will be deemed that the assessment has been notified within the time limit, if the provisions in article 26.4 LGSS are fulfilled (which require an application for inclusion of the person with obligations to have been filed within the established regulatory period).
- Certain elements of contributions made by some classes of workers are amended, such as the contributions of representatives for business transactions (*representantes de comercio*), entertainers in public shows, seafarers, and those related to part-time and hand-over contracts.

3. General regulations on social security revenues, approved by Royal Decree 1415/2004, of June 11, 2004 (RGRSS)

The most newsworthy changes to the RGRSS are:

- Adaptations to the nomenclature, terminology and contents in the Regulations to the new wording contained in the LGSS in matters concerning the assessment of contributions, debt claims, notices of assessment, surcharges, etc.
- Amendments to the notification procedure for revenue management decisions, on the social security website.
- It is stressed that the assessment obligations must be complied with at least even if the relevant contributions are not made in the regulatory period.
- The provisions related to debt claims and notices of assessment are amended and adapted. In relation to the notices of assessment, the time limit that the ITSS can lay down for the payment of contributions has been lengthened from 1 to 4 months.
- Two ways to make offsets and deductions against the contribution assessments are provided: (i) in the self-assessment system for contributions, the offset will be made by the payer himself in the assessments filed within the period or, if applicable, in the contribution documents filed in that period; and (ii) in the direct assessment system for contributions, the offset will be applied by the TGSS in relation to the workers for which the assessment may be made within the time limit, according to the data produced by the social security management entities and authorized entities.

4. Other important matters

- Amendments are also made to the general regulations on financial management of the social security system, approved by Royal Decree 1391/1995, of August 4, 1995 (RGGF), concerning movements of funds and cash transactions.
- This Royal Decree 708/2015, of July 24, 2015, will enter into force on July 26, 2015 except for the new wording given to article 43.1.1.^a RGIASS and article 31 RGCSS – both on the contributions of representatives for business transactions -, which will enter into force on September 1, 2015.

- It repeals any provisions of primary or secondary legislation that contradict the provisions in the law and, expressly repeals, effective on September 1, 2015, article 5 of Royal Decree 2621/1986 including the special social security regimes of railroad workers, soccer players, representatives for business transactions, bullfighters and entertainers in the general regime, and it also includes the regime for book writers in the special regime for self-employed workers and articles 3 to 6 of the Order of July 20, 1987 implementing it.

The following link will take you to the complete wording of the royal decree:

<http://www.boe.es/boe/dias/2015/07/25/pdfs/BOE-A-2015-8339.pdf>

