

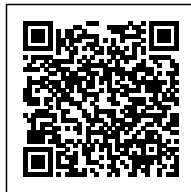
A QUIET SOCIAL SECURITY REFORM - DELOITTE

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Javier Menor

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At the end of 2013, the Spanish Government passed the Royal Decree-Law 16/2013, December 20th, on measures to favour the stable employment and improve the employability of employees. This is yet another amendment to the Labour and Social Security legislation within the framework of the reforms marathon that began in 2012.

Under its ambiguous title, and on a format foreseen by the Spanish Constitution for urgent matters, this enactment contained important changes, which, among others, include: the extension of the reduction of working hours for childcare until the minor reaches the age of 12, modifications affecting the part-time employees overtime and supplementary time orderliness, etc.

Social security

However the modification that has caused the most controversy is the one related to social security. In this sense, as with other items such as marriage allowance, working clothes, and wear and tear of

tools in 2012, the Royal Decree-Law has included in the social security contribution base several items that, so far, were exempt. The following benefits are now incorporated in the social security contributions base: the urban transport and distance supplement; all improvements to social security benefits except for sickness leave; meal vouchers; delivery of shares; medical insurance; and, pension plan allocations.

This measure has caused many reactions from employers, due to the increase it causes in the personnel-related costs to companies, as well as among workers' representation environments, not only because of the process followed for its approval without previous consultation or notice, but also owing to the net sum of money received by the employee at the end of the day. However, due to the stir generated, some implications of this increase in the social security contribution base have not been straightforward nor understood by all collectives, leading to misunderstandings.

Modifications and clarification

In order to help clarify, it is important to first of all recall that these modifications will not affect employees whose annual gross salary exceeds €43,164 due to the fact that social security contributions in Spain are capped. Moreover, the modification only affects benefits that were granted to employees on top of their salary. These concepts didn't use to be included in the social security basis, but will have to be from now on as opposed to those benefits that were given in lieu of salary by deducting a proportional part of the remuneration which were already subject to contributions. After the adjustment introduced, these concepts will from now on contribute in any case. However the national tax treatment remains unchanged being all of these concepts still tax exempt.

Nevertheless, some local jurisdictions such as Vizcaya and Guipuzcua are starting to adjust their tax legislations in order to consider some of these benefits, for instance medical insurance, as salary in kind. At this stage, the possibility of this tax initiative being extended to the national tax regime cannot be ruled out, generating other uncertainties such as whether these concepts would have to be included for severance compensation calculation purposes or not.

Further criticism targets the administrative inconveniences cause by the implementation of the measure, among others, having to contribute in accordance with two different rules within the month of December: for the first part of the month this items will be exempt according to the now obsolete regime, and from the day after the publication of the Royal Decree-Law companies will have to contribute in accordance with the new dictate up to the end of the month.

The administration addresses the matter by arguing that the reform aims to confront the overuse of exempt items by companies trying to lower social security contributions. Furthermore, the Minister for Employment and Social Security stated before the Spanish Parliament on January 16th, 2014, that this new measure "protects the employees because it increases their contribution basis, and therefore, their future rights".

Further analysis

Notwithstanding the above, the pressures based on the incertitude and complaints coming from the main stakeholders such as the Spanish Confederation of Business Organisations (CEOE) have so far achieved an extension of the deadline for legalising the situation until the May 31th, 2014, with the CEOE hinting that the Ministry might temper this measure.

Along these lines, the modification and its ambiguities are now subject of analysis in many Spanish companies in order to assess its consequences and establish possible measures for mitigating its impact (ie, internal flexibility measures, substantial modification of working condition procedures, etc). Likewise, this quiet reform shows that these beneficial concepts, which were so far a bargaining

chip in negotiations between a company and the workers representatives, may start disappearing from the working conditions' landscape.

María Victoria Jiménez de Pablo is an Associate at Deloitte Abogados. She can be contacted at mjimenezdepablo@deloitte.es