

## Items included and excluded from the Contribution Base as of 22 December 2013

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With the goal of “achieving sustainability in the Social Security System”, the 3<sup>rd</sup> Final Provision of the Royal Decree-Act 16/2013 of 20 December, on measures to promote stable employment and improve employability, amended art. 109 of the General Social Security Act (GSSA), which regulates the contribution base in the Social Security General Regime.

The above amendment is raising many questions as to whether (i) certain items hitherto excluded, in full or in part, are still excluded and (ii) whether the guidelines laid down in the general regulation of other Social Security claims – and in the personal income tax (IRPF, its acronym in Spanish) regulation to which such refers – still apply.

Given the difficulties of an immediate implementation of relevant changes, the Spanish Social Security Agency is circulating a “Bulletin” (with no legislative value) which (i) sets 31 March 2014 as time limit to adjust contributions and (ii) attempts to clarify the aforementioned issues<sup>1</sup> with the following information, subject to final regulatory implementation of the GSSA:

- The changes are contained in a rule with statutory rank and so prevail over regulations that contradict the same. This suggests that RD 2064/1995, approving the general regulation of the contribution and assessment of other Social Security claims (GCR), has been tacitly repealed in that which is not consistent with the new design of art. 109 GSSA.
- Art. 109 GSSA now lists the only items excluded from the base, so those omitted, in cash or in kind, salary-related or not, should form part of such base <sup>2</sup>.
- The changes increase the contribution base, so they have no practical effect for those already calculating contributions on the upper earnings limit. In most cases, the cost has increased for both the employer and the worker.
- The amendment came into force on Sunday 22 December so that, strictly speaking, remuneration accrued from that date is subject to the new rules<sup>3</sup>.

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<sup>1</sup> <http://www.seg-social.es/prdi00/groups/public/documents/binario/178628.pdf>

<sup>2</sup> The convoluted wording of art. 109.2 GSSA reflects that purpose; according to the same “only the following items shall not count in the calculation of the contribution base.”

<sup>3</sup> The legislative oversight in this point renders necessary a more complex calculation for December contributions, the adjustment period allowed by the Social Security Agency recognizes this much.

- The variations affect the contributory nature of the different remuneration items, not their legal nature and consequent consideration for other purposes (e.g. compensation).
- There is no provision specifically requiring a renegotiation of existing collective bargaining agreements (which are affected by the higher cost in social security contributions) as a result of this variation; however, the current wording of the Workers' Statute does allow that possibility<sup>4</sup>.

Thus clarifying that all that is not expressly excluded from the base is now included, one should take a moment to analyse certain specific items.

#### A) Travelling expenses

- *BEFORE*: Expenses incurred travelling to work outside the worker's normal place of work are exempt from contribution in the amount and to the extent defined by regulation. And art. 23.2 GCR referred to art. 9 of the IRPF Regulation, so that whatever exceeded the amounts exempt from such tax had to be included in the contribution base.
- *Now*: This so-called regulatory implementation is eliminated, leaving us only the Act. But its new content still adheres to IRPF regulation, so there is no significant change:
  - a) If the worker uses public means of transport, expenses supported with an invoice or equivalent document are excluded (the IRPF Regulation already stated this).
  - b) If he does not use public means of transport or does not provide supporting documentation thereof, expenses are excluded in the amount and to the extent provided in the legislation regulating IRPF<sup>5</sup>.

#### B) Per diem (living) and travel (accommodation) expenses

- *BEFORE*: Per diem and allowances for travel expenses due to work outside the worker's *normal place of work* were exempt from contribution in the amount determined by regulation. For its part, art. 23 GCR specified that ordinary living and travel expenses on restaurants, hotels and other catering establishments, occurring in municipalities different from the worker's normal place of work and residence, were excluded in the amount determined by the IRPF Regulation<sup>6</sup>.
- *Now*: The Act changes its terminology to adopt that of the GCR, no longer referring to per diem and travel expenses, but alluding to "ordinary living and accommodation expenses" incurred in a municipality other than the normal place of work and residence. Beyond the initial confusion this change might cause, these items that are still excluded in the amount and to the extent provided in the legislation regulating IRPF<sup>7</sup>.

#### C) Extra pay for city transport and distance

- *BEFORE*: Extra pay for city transport and distance, on account of commuting from the place of residence to the normal place of work, was excluded from the contribution base in the amount and to the extent determined by regulation. Art. 23 GCR specified that such extra pay was only excluded from contribution if its amount did not exceed 20% of the monthly Spanish Income Indicator for Relief and Benefits (IPREM, its acronym in Spanish) in effect at the time of accrual, without including the part related to bonuses.
- *Now*: Art. 109.2 GSSA no longer mentions extra pay for city transport and distance as exempt items and so, regardless of the tax

<sup>4</sup> In extreme cases, there may be opt-outs; also substantial amendments if involving compensation items outside the collective bargaining agreement.

<sup>5</sup> Therefore, the provisions in paras. A) 2 - € 0.19 per km travelled, provided that travel is evidenced, plus any evidenced tolls and parking fees -, 4, 5 and 6 and B) of art. 9 of the IRPF Regulation still apply.

<sup>6</sup> Similarly, living expenses paid or compensated to workers under special employment were excluded from contribution with the limits of tax legislation.

<sup>7</sup> That is, paras. 3, 4, 5 and 6 of art. 9 A) of the IRPF Regulation are still applicable.

regime, they become part of the contribution base.

similar methods of payment-, exempt up to 9 euros a day).

#### D) Social Security benefits and improvements

- **BEFORE:** Social Security benefits were excluded, and with regard to improvements there was a referral to implementing regulation. For its part, art. 23 GCR specified that pension scheme payments and insurance premium financing to meet pension obligations were regarded as improvements, but assistance and other monetary amounts spent in healthcare expenses should be included in the contribution base.
- **Now:** Social Security benefits remain excluded, but the referral to regulation disappears, and the Act states that the only improvements that remain exempt from contribution are temporary disability benefits. Therefore, any other benefits, including payments into a pension scheme, have been incorporated in the contribution base.

- use of property assigned to social and cultural services of employed personnel (areas or premises to provide kindergarten services to the children of employees or hiring of the services from third parties).
- Insurance contract premiums or fees against accidents at work, work or non-work related illness, or employee liability.
- provision of education (from kindergarten to high school and vocational training), by authorised educational centres, to the children of employees.
- such other allowances expressly established or enforced by law.

#### E) Employee allowances (includes meal vouchers)

- **BEFORE:** Employee allowances were excluded under the terms specified by regulation and art. 23 GCR alluded to the following:
  - allotment of shares in a company or group companies.
  - amounts earmarked for courses organised by institutions or employers and financed directly by them to update, train or recycle personnel where required by the worker's activity or job characteristics.
  - delivery of products at discount prices in workplace canteens, dining areas or stores, regarding as such direct or indirect service provision or cash alternative payment formulas, under the terms of art. 45 of the IRPF Regulation (which envisages the possibility of using *meal vouchers*, electronic cards or

- **Now:** Any referral to implementing regulation also disappears here, and the only employee allowances the Act regards as excluded from the contribution base are those earmarked for payment of courses to update, train or recycle personnel where required by the worker's activity or job characteristics<sup>8</sup>.

#### F) Payments for business entertainment

- **BEFORE:** Art. 23.1 GCR provided that the amounts in money or goods in kind provided by the employer to his employees for business entertainment expenses and, in general, with the sole purpose of entering into contracts with third parties, were not included in the contribution base, provided that such cash amount or product value did not exceed the equivalent to two times the monthly IPREM in effect each year, excluding the part related to bonuses.
- **Now:** Given that art. 109 GSSA states that the only excluded items are those it mentions and, secondly, that the implementing regulation must be deemed repealed in that which is contrary to the Act, one can only conclude that the Regulation's provision on

<sup>8</sup> Therefore, the allotment of shares, allowances for kindergarten and school of employees' children, health insurance premiums or fees, and the provision of catering or indirect formulas through meal vouchers or similar systems are now incorporated in the contribution base.

payments for business expenses must be regarded as inexistent, so that they form part of the contribution base regardless of the amount of such payments.

**G) Bereavement, transfer, suspension or severance pay**

The exclusion continues on the same terms as before the reform.

**H) Social Security Benefits**

Still excluded with no change.

**I) Overtime**

As before the reform, overtime does not contribute unless caused by accidents at work and occupational diseases under the Social Security.

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