

Changes in the Social Security Contributions Liability for 2011 in France: Spotlight on the Severance Indemnity

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With the economic crisis, many European states are taking initiatives to limit their deficits. In France, the government has announced €47 billion in public savings in the country's 2011 social security budget. Amongst the various measures adopted by the French Parliament in Law n°2010-1594, dated 20 December 2010, are some that impact individuals and employers, including those relating to the social security contributions that apply to severance indemnities.

Changes to Social Security Liability for Severance Indemnity

In France, the severance indemnity paid to an employee upon the termination of an employment contract has been exempted from social security contributions and from the CSG (*Contribution Sociale Généralisée*) and the CRDS (*Contribution au Remboursement de la Dette Sociale*) (two additional contributions), up to the legal severance indemnity or up to the severance indemnity calculated as per the applicable collective bargaining agreement (*indemnité conventionnelle de licenciement*).

Severance payments above this amount (e.g., indemnities paid through a settlement agreement) have been subject to the CSG and the CRDS, but have been exempted from social security contributions up to the greater of (i) one-half of the total severance indemnity or (ii) two times the annual compensation paid to the employee during the previous year with a global cap of six times the social security annual ceiling (*indemnité légale de licenciement*) (€207,720 in 2010).

Severance indemnity paid pursuant to a social plan negotiated with the employee's representatives (*plan de sauvegarde de l'emploi – PSE*) or pursuant to a collective agreement made in connection with employment-level management (*gestion prévisionnelle de l'emploi et des compétences – GPEC*) also currently benefits from favorable social treatment as they have been fully or partially exempted from social security contributions.

As of 1 January 2011, these exemptions are changing. In general, the severance indemnity paid to an employee upon termination of an employment contract (including severance indemnities paid pursuant to a social plan or pursuant to an employment-level management agreement) will be exempted from social security contributions up to a reduced cap of **three** times the social security annual ceiling (€106,056 in 2011). The cap of six times the social security annual ceiling (€212,112 in 2011) will be maintained temporarily only under the following conditions:

- For all termination indemnities paid in 2011 for terminations having taken effect on 31 December 2010 at the latest
- For terminations deriving from a social plan drafted and notified to the labor administration on 31 December 2010 at the latest
- For termination indemnities paid in 2011 for terminations taking effect in 2011 only up to the severance indemnity calculated pursuant to a collective bargaining agreement or a collective agreement in force on 31 December 2010

As the below examples demonstrate, these changes will result in higher costs to employers and lower net pay to employees.

Example 1

Current Law

For a total severance indemnity of €250,000 received by an employee terminated before 31 December 2010 who has received an aggregate compensation of €100,000 in 2009 when the employee was entitled to receive €80,000 as legal severance indemnity				
Severance indemnity paid to the employee	CSG and CRDS	SS Contributions	Net amount received by the employee	Total cost for the employer
€80,000	No	No	€80,000	€80,000
€120,000 ((2 x 100,000) – 80,000)	Yes	No	€110,688	€120,000
€50,000 (250,000 – 80,000 – 120,000)	Yes	Yes	€39,000*	€72,500**
Total: €250,000			€229,688	€272,500
* Estimated SS contribution of 22% for the employee				
** Estimated SS contribution of 45% for the employer				

New Law

For a total severance indemnity of €250,000 received in 2012 by an employee terminated in 2011 who received an aggregate compensation of €100,000 in 2010 when the employee was entitled to receive €80,000 as legal severance indemnity				
Severance indemnity paid to the employee	CSG and CRDS	SS contributions	Net amount received by the employee	Total cost for the employer
€80,000	No	No	€80,000	€80,000
€26,056 (106,056 – 80,000)	Yes	No	€24,034.05	€26,056
€143,944 (250,000 – 106,056)	Yes	Yes	€112,276.32*	€208,718.80**
Total: €250,000			€216,310.37	€314,774.80
* Estimated SS contribution of 22% for the employee				
** Estimated SS contribution of 45% for the employer				

Example 2

Current Law

For a total severance indemnity of €500,000 received by an employee terminated before 31 December 2010 who has received an aggregate compensation of €200,000 in 2009 when the employee was entitled to receive €150,000 as legal severance indemnity				
Severance indemnity paid to the employee	CSG and CRDS	SS contributions	Net amount received by the employee	Total cost for the employer
€150,000	No	No	€150,000	€150,000
€57,720 (207,720 – 150,000)	Yes	No	€53,240.93	€57,720
€292,280 (500,000 – 207,720)	Yes	Yes	€227,978.40*	€423,806**
Total: €500,000			€431,219.33	€631,526
* Estimated SS contribution of 22% for the employee				
** Estimated SS contribution of 45% for the employer				

New Law

For a total severance indemnity of €500,000 received in 2012 by an employee terminated in 2011 who has received an aggregate compensation of €200,000 in 2010 when the employee was entitled to receive €150,000 as legal severance indemnity				
Severance indemnity paid to the employee	CSG and CRDS	SS contributions	Net amount received by the employee	Total cost for the employer
€106,056	No	No	€106,056	€106,056
€393,944 (500,000 – 106,056)	Yes	Yes	€307,276*	€571,218**
Total: €500,000			€413,332	€677,274.8
* Estimated SS contribution of 22% for the employee				
** Estimated SS contribution of 45% for the employer				

In addition to the changes to social security contributions, the new law includes the following additional changes:

- **Modification of the CSG and the CRDS basis:** The 3% deduction on the compensation subject to the contribution is capped at four times the social security annual ceiling (total of €141,408 for 2011). Over this threshold, 100% of total compensation will be subject to the CSG and the CRDS (assessed at the rate of 8%).
- **Increase in the tax burden attached to French qualifying stock options and free shares:** The rate of the social security contribution for qualifying stock options and free shares is increased from 10% to 14% for the employer and from 2.5% to 8% for the employee, except for the grant

of free shares whose annual value does not exceed one-half of the social security annual ceiling (€17,676 for 2011).

- **Increase in additional company pension plans (*retraite chapeau*):** Employer contributions will be paid from the first Euro of pension paid to the employee; employee contributions will be 7% on pension payments between €400 and €600 per month and 14% on pension payments over €600 per month.
- **Increase in the so-called employer contribution (*forfait social*):** The rate of this contribution due on additional compensation schemes (such as profit sharing) is increased from 4% to 6%.

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