

DEADLINE APPROACHES FOR COMPLIANCE WITH 2005 FRENCH LAW

SEVERAL MONTHS REMAIN BEFORE FRENCH EMPLOYERS MUST COMPLY WITH THE FILLON AND DOUSTE-BLAZY LAWS PASSED IN 2005. THEY SHOULD WASTE NO TIME, HOWEVER, IN MAKING SURE THEY ARE IN FULL COMPLIANCE IF THEY PAY FOR EMPLOYEE BENEFITS AND WANT TO ENJOY THE PAYROLL TAX BREAK THE LAW PROVIDES. FAILURE TO FOLLOW THE STRICT RULES CAN MEAN A HEFTY, RETROACTIVE TAX BITE, NOT JUST FOR EMPLOYERS BUT THEIR EMPLOYEES AS WELL.

The laws dramatically modified the conditions under which companies calculate their contribution to French social security in an effort to encourage employee contributions to employee benefits, including death, incapacity and disability benefits, healthcare costs and retirement pension plans. An addendum to the laws was issued in January 2008, setting the compliance deadline at January 1, 2009.

The laws apply to all companies in France and therefore all subsidiaries of international companies operating in France.

Under the laws, employee contributions to benefits are exempt from payroll taxes, and the amount employers contribute for each employee is not considered part of the employees' wages, and hence not subject to income taxes. This relief is only available, however, to benefit plans in full compliance with the rules.

STRICT CONDITIONS

Below are several of the key conditions of compliance.

- Plans must be outsourced. Benefits must be supported by a private insurer or mutual.



- Implementation must follow procedures set forth in the law, whether plans are adopted by collective agreement, referendum or the employer's unilateral decision.
- The plans must apply to all employees, and not to "some special categories of personnel."
- Plans must be mandatory.
- The law includes a non-substitution principle: a plan cannot be set up to offset bonuses or other compensation paid. Plans cannot be set up within 12 months of a taxable dispersion, such as a bonus plan.

Failure to comply with these conditions will result in the plan financing being reintegrated into the employer's social contributions or tax base. In other words, contributions that the employer treated as exempt would be considered a taxable wage by the government.

INTRODUCING THE NEW JUDGE AND REFEREE

The Fillon law assigned the role of rule enforcer to the government agency *Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales* (URSSAF). This agency in the past has had little involvement in the control of employee benefits but now has the responsibility of verifying compliance of these plans.

French employers have experienced little oversight of their benefit plans – except in retirement pensions – where recent abuses caught the attention of government regulators. The government was previously responsible for making sure that benefit schemes were properly administered, so that employees could rightfully receive their income tax reduction (which has long been in place). Officials rarely pursued these cases because many households are not subject to income tax and the cost of pursuing individuals for unpaid taxes outweighed the potential benefit. The URSSAF will have much more incentive to uphold the new regime.

Companies that have had benefit plans in place since the law was passed should carefully review their benefit schemes to ensure compliance. Should a benefit scheme fail to pass an URSSAF audit, the employer could face the reintegration of social security charges into their taxable payroll for the three years since the law was passed. Employees could also face a reintegration in their income tax of contributions made over the same period.

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