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Legal Alert

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The additional solidarity contribution -also known as the "solidarity charge"-, provided for in article 19 *bis* of the General Social Security Law ("GSSL"), finally entered into force, along with its implementing regulations per RD 322/2024, on 1 January 2025.

1 January 2025 saw the entry into force of the **additional solidarity contribution** provided for in article 19 *bis* of the GSSL (also referred to as the **"solidarity charge"**).

Despite its introduction by means of Royal Decree-Law 2/2023 of 16 March 2023 (Official State Gazette of 17/03/2023), most of the provisions of which became effective as of 1 April 2023, the entry into force of this particular mechanism was postponed until 1 January 2025.

1 January 2025 also witnessed the entry into force of the **regulations implementing** the "solidarity charge", set out in Royal Decree 322/2024 of 26 March 2024 (Official State Gazette of 27/03/2024), effective, with the exception of certain provisions -including that relating to the regulations implementing the "solidarity charge"- from 1 April 2024.

Bear in mind that RD 322/2024 amended:

- ✓ the General Regulations on Contributions and the Settlement of other Social Security Rights (approved by RD 2064/1995), with a view to establishing the necessary regulatory framework for implementation of the **additional solidarity contribution**; and
- ✓ the General Regulations on Social Security Collection (approved by RD 1415/2004), with a view to amending various aspects of, inter alia, the procedure for the **reimbursement of unduly received benefits**, and the **attachment of assets** in enforced collection proceedings.

"Solidarity charge"

The **additional solidarity charge** provided for in article 19 *bis* of the Revised General Social Security Law of 2015 was introduced by means of RD-Law 2/2023, thus completing the 2021 pension reform, whereby a series of **urgent measures** was adopted to extend the rights of pensioners, reduce the gender gap and establish a **new framework for the sustainability of the state pension system**.

This additional solidarity contribution affects **salaried employees registered with the social security system whose remuneration exceeds the amount of the maximum contribution base. Self-employed workers** are **exempt** from paying this charge.

Article 19 specifically provides as follows:

> *Article 19 bis. Additional solidarity contribution.*
>
> *"The amount of the **remuneration** referred to in article 147 which **exceeds the amount of the maximum contribution base** established for salaried employees registered with the social security system to whom such article applies shall be subject, when settling contributions, to an additional solidarity contribution in accordance with the bands described below:*
>
> *The solidarity contribution shall be the result of*

*applying **a rate of 5.5%** to the portion of the remuneration falling between the maximum contribution base and the amount exceeding the maximum contribution base by 10%; a **rate of 6%** to the portion of the remuneration exceeding the maximum contribution base by between 10% and 50%; and **a rate of 7%** to the portion of the remuneration exceeding the contribution base by more than 50%.*

The percentage of the solidarity contribution rate payable by the employer and the employee shall be the same as the percentage of the contribution rate payable by each for non-occupational contingencies".

In short, the additional solidarity charge **varies according to the amount of income earned by employees in excess of the maximum contribution base provided for in the General State Budgets Law (the "GSB Law") for the relevant year**. To this end, the legislation provides for three salary bands subject to progressive contribution rates.

Entry into force and phasing-in of the measure

The **additional solidarity contribution** provided for in article 19 *bis* of the GSSL -introduced by RD-Law 2/2023- was scheduled to take effect on **1 January 2025**.

Likewise, although the majority of the provisions of RD 322/2024 took effect as of 1 April 2024, the **regulations implementing** the additional solidarity charge also entered into force on **1 January 2025**.

The phasing in of the measure is provided for in transitional provision 42 of the GSSL, which envisages a transitional rule for application of the additional solidarity contribution, whereby **such contribution will be progressively increased as of 2025 until the definitive rate is applied in 2045**. Thus:

- **First band**: remuneration exceeding the maximum base by up to 10%.

  The relevant contribution rate will begin at 0.92% in 2025, increasing to 5.5% in 2045.

- **Second band**: remuneration exceeding the maximum base by between 10% and 50%.

  The relevant contribution rate will begin at 1% and increase to a maximum of 6%; and

- **Third band**: remuneration exceeding the maximum base by more than 50%.

  The relevant contribution will begin at 1.17% and increase to a maximum of 7%.

Provisions of the implementing regulations

Article 2 of RD 322/2024 lays down the **rules governing implementation of the additional solidarity contribution** in the form of a new article 72 *bis* of the General Regulations on Contributions and the Settlement of other Social Security Rights.

Broadly speaking, the regulations implementing the "solidarity charge" provide that:

- ✓ The additional solidarity contribution in respect of the remuneration referred to in article 19 *bis* of the GSSL shall be applied to the **difference between (i) the amount of the maximum contribution base for non-occupational contingencies** applicable to salaried employees and **(ii) the amount by which the contribution base exceeds that to which they would have been subject in the absence of such maximum base**.

  Under Royal Decree 322/2024, this calculation is subject to correct application of the contribution rules to the remuneration received, in accordance with the legally established bands and percentages.

  It should be noted here that the Draft Ministerial Order which sets out the statutory rules on social security contributions, unemployment, protection in the event of discontinuation of activity, the Wage Guarantee Fund and vocational training for 2025, establishes the tables for the above bands and percentages for 2025.

  Among other issues, this Draft Order establishes, **with effect from 1 January 2025**, the amount of the **minimum and maximum contribution bases** for non-occupational contingencies under the General Scheme, for each group of professional categories (**as of 1 January 2025, the maximum contribution base** for the General Scheme **is capped at Euros 4,909.50**).

  Article 66 of the recently passed Royal Decree-Law 1/2025 of 28 January 2025, approving urgent measures on economic, transport and social security matters and addressing situations of vulnerability, provides for the **updating of the maximum and minimum contribution bases in the social security system**.

  Subparagraph 1 of the above article states that, **for 2025**, and until the relevant GSB Law is passed, the **minimum contribution bases** of contribution groups under the schemes for which such bases are established will be **automatically increased** by the **same percentage as the national minimum wage ("NMW"), plus one sixth**, and that the **maximum bases** for each professional category and the **maximum ceiling for contribution bases** will be set by applying the **percentage envisaged for the revaluation of pensions** plus that established in transitional provision 38 of the Revised GSSL.

Meanwhile, article 66.3 of RD-Law 1/2025 provides that, per the provisions of article 19 *bis* and transitional provision 42 of the Revised GSSL, **as of 1 January 2025**, a **contribution** must be made for the **amount of the remuneration referred to in article 147** of the Revised GSSL that **exceeds the amount of the maximum contribution base** established for salaried employees under the social security scheme to whom such article applies.

- ✓ The proportion of the solidarity contribution payable by **the employer and employee**, respectively, will be the same as for the contribution for non-occupational contingencies.

From 1 January 2025 onwards, the contribution rate for non-occupational contingencies under the general scheme is 28.3%, 23.6% of which is to be borne by the employer and 4.7% by the employee.

Based on these proportions, the **contribution will be distributed as follows in 2025**:

CONTRIBUTION BASE EXCESS	EMPLOYER	EMPLOYEE	TOTAL
First band	0.77%	0.15%	0.92
Second band	0.83%	0.17%	1
Third band	0.98%	0.19%	1.17

In **2045**, **contributions** are expected to be **distributed** as follows:

CONTRIBUTION BASE EXCESS	EMPLOYER	EMPLOYEE	TOTAL
First band	4.58%	0.92%	5.5
Second band	5%	1%	6
Third band	5.84%	1.16%	7

- ✓ The above also applies in cases where social security contributions are made on the basis of fixed contribution bases or charges.

This could be the case in situations such as those referred to in article 6 of Presidency, Justice and Parliamentary Relations Order PJC/51/2024, relating to temporary incapacity, risk during pregnancy, risk during breastfeeding and the enjoyment of rest periods for childbirth and childcare or shared parental care for infants, even where they constitute grounds for suspension of the employment relationship.

- ✓ The regulatory deadline for payment of the additional solidarity contribution **is the last day of the month following the month in which the remuneration** referred to in article 19 *bis* of the GSSL **is payable**.

- ✓ Per article 29.2 of the GSSL, **employers** must notify the Social Security General Treasury ("SSGT"), by electronic means, of:

  (i) the particulars of the workers subject to this additional contribution;

  (ii) the **period** in which the remuneration is to be paid;

  (iii) the **amount of the remuneration** giving rise to a contribution base that **exceeds** the maximum contribution base applicable; and

  (iv) the **amount of the contribution bases** falling between the maximum base and the base determined by the remuneration taken into account for these purposes.

- ✓ In the exercise of its powers, the **labour and social security inspection office** shall monitor fulfilment of the obligations under article 72 *bis*.

Notwithstanding the foregoing, **the SSGT will exercise** the powers of verification referred to in article 36.1 of the GSSL **with respect to the additional solidarity contribution**, based on the data available at any given time, which will allow the corresponding contribution settlements to be recalculated.

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