Spain promotes company supplementary social welfare systems

New public-sector and simplified occupational pension schemes are created, providing tax and social security incentives

Legal flash

July 2022

Key aspects

- New legislation strengthens second-pillar pension funds by introducing new public-sector occupational pension funds and simplified occupational pension schemes.
- It improves personal income tax incentives on subscribing to social welfare systems to benefit average and low income taxpayers, and it promotes contributions to simplified occupational pension schemes.
- It brings the tax regime of Pan-European Individual Personal Pension Products into line with that of the pension schemes.
- It reduces corporate income tax on certain company contributions.
- Company contributions to occupational pension schemes enable companies to reduce employers' social security contributions.

Introduction

With the central aim of strengthening the second-pillar pension system, Act 12/2022, which entered into force on July, 2, 2022, significantly amends the legal framework of company supplementary social welfare systems, as follows:

- It introduces two new mechanisms, namely public-sector occupational pension funds (“**PSOPF**”) and simplified occupational pension schemes (“**SOPS**”).
- It imposes the obligation on companies to negotiate and, if applicable, reach agreements with workers’ legal representatives on social welfare systems.
- It bans the promotion of associated pension schemes and enables plans of this type currently in force to be converted into occupational pension schemes or individual pension schemes under a transitional regime.

The act offers improved tax incentives for contributions to social welfare systems, to SOPS and to Pan-European Individual Personal Pension Products.

Also, it regulates incentives related to employers’ social security contributions for companies that make contributions to occupational pension schemes.

Below is a Q&A explaining the recently approved developments.

Public-sector occupational pension funds

What are public-sector occupational pension funds and why have they been approved?

PSOPF are pension funds arranged by the Ministry of Inclusion, Social Security and Migration **exclusively to design occupational pension schemes**.

Which pension schemes can be included in an PSOPF?

Only (i) SOPS, which are also regulated under Act 12/2022; (ii) defined-contribution occupational pension schemes for retirement, although they may offer defined benefits for other contingencies if they are insured; and (iii) occupational pension schemes of this kind that are subject to Directive (EU) 2016/2341, on the activities and supervision of institutions for occupational retirement provision.

Who will arrange PSOPF?

PSOPF will be arranged by the **arrangement and oversight commission** of the PSOPF a body attached to the Ministry of Inclusion, Social Security and Migration, which will act as representative of the General State Administration.

Who will be in charge of managing the PSOPF?

PSOPF will be managed by **private managing bodies** following a tender for depository entities, and under the supervision of a single Special Supervisory Commission for all open PSOPF.

A **common digital platform** will be set up to streamline operations and to guarantee the interoperability of managing and depository entities, and the standardization and quality of processes. This platform will be accessible to companies, participants and beneficiaries for their basic transactions, and it will enable the traceability of participants' and promoters' movements, regardless of any registered transfers of a plan.

What are the particularities of the financial system governing PSOPF investments?

The PSOFP investment system will follow the general criteria applicable to pension scheme investments, with certain particularities.

Besides profitability and risk, PSOPF investments must be made taking into account their **social and environmental impact**. PSOPF cannot invest in companies or businesses with headquarters in one of the non-cooperative jurisdictions for tax purposes included in the list adopted by the European Council on February 24, 2022, or on the Spanish list of non-cooperative jurisdictions adopted under Royal Decree 1080/1991, and they cannot invest in companies that have committed an environmental or labor crime in the 10 years prior to the investment.

The investment strategy of PSOPF portfolios must establish the limits on the use of derivative instruments, apply profit and risk weight criteria, security, diversification, dispersion and congruence criteria and, particularly, integrate **environmental, social and governance (ESG)** sustainability factors in line with the principles of responsible investment, especially the **Sustainable Development Goals (SDG)** and the criteria on **environmental and social taxonomy** of the EU.

PSOPF will be classified as fixed-income pension schemes, mixed fixed-income pension schemes or variable income pension schemes.

Simplified occupational pension schemes

What are simplified occupational pension schemes?

Simplified occupational pension schemes are the second main development of the reform and are those:

- arranged by **companies** included in the scope of application of **sectoral collective agreements** that implement pension commitments;
- arranged by **public administrations**;
- arranged by associations, federations, confederations or **joint self-employed worker or independent contractor associations**, by unions, by professional associations or by welfare mutual insurance entities, to which only self-employed workers and independent contractors are able to subscribe; and
- arranged by the partners of **cooperatives and worker-owned companies**.

Which collective agreements can impose a SOPS?

Sectoral statutory collective agreements, i.e., those meeting the procedural and processing requirements set out under Title III of the Workers Statute.

Is it mandatory for collective agreements to provide for the implementation of pension commitments?

No. However, under the new regulation, companies are **obliged to negotiate** and, if applicable, agree to occupational social welfare systems if they are not included in the minimum content of the collective agreement.

Are companies obliged to subscribe to a SOPS?

Yes, if so established in the **collective agreement**. Employers may improve on the amounts laid out in the agreement.

If so provided in the collective agreement, companies may have the option **not to subscribe** to the SOPS on condition that they **arrange their own occupational pension scheme**, the conditions of which cannot be worse than those of the SOPS in the collective agreement.

Will workers be included directly in the SOPS?

Yes, unless the option **not to be included in the** SOPS is provided in the agreement, which must be exercised **in writing** and in the **established term**.

Collective agreements are no longer allowed to impose conditions on companies' obligations to include workers in the plan.

How is a SOPS arranged?

The initial project of the **sectoral** SOPS must be established through an **industry-wide collective agreement**.

The arrangement of **public-sector** SOPS will require the agreement of the negotiation table of the corresponding public administration.

The project must include at least the specifications with the general conditions common to all of the companies, bodies and self-employed workers or independent contractors that subscribe to the simplified occupational pension scheme and, if applicable, the technical base of that scheme.

In which pension funds can SOPS be included?

SOPS **can be included** in a PSOPF or in a privately arranged occupational pension scheme of their choice.

What are the features of SOPS with regard to the stipulated obligations?

SOPS will be of **defined-contribution** occupational pension schemes for **retirement**.

For **other contingencies**—death, permanent disability and dependence of the subscriber—they can include **defined benefits** that must (i) be articulated in the insurance contracts required by the plan, the duration of which cannot exceed one year; and (ii) be renewable.

Companies are liable for contribution obligations of workers.

In the case of SOPS arranged by associations, federations, confederations or joint self-employed worker or independent contractor associations, by unions, by professional associations or by welfare mutual insurance entities, the contribution obligations must be covered by the self-employed workers or independent contractors.

What is regulated under a SOPS?

SOPS **specifications** will be **common** to all companies or bodies included in them. Each **company must be included in an individual annex** setting out the particular conditions relating to the contributions of each one.

The technical base of SOPS must also include the annexes for each company or body, setting out the contributions and provisions, and how they are insured.

In the case of defined-benefit contributions, it will be necessary to limit the risks corresponding to each company. Each company will be responsible for the obligations it assumes with regard to participants and beneficiaries.

Can beneficiaries of a SOPS transfer their vested rights?

The vested rights of SOPS can only be **transferred** to occupational pension schemes in the terms and with the exceptions determined by law.

Have any other transitional rules been introduced to adapt occupational pension schemes and other pre-existing social welfare schemes?

Occupational pension schemes and other pre-existing social welfare schemes that are subject to the same tax regime as occupational pension schemes (e.g., employer complementary social security schemes), **may adapt** their specifications, policies or rules on provisions to be included in the **SOPS category**. Once the adaptation agreement has been adopted by the supervisory commission or competent body, the institutional aspects of the instrument must be adapted **within the following 12 months**.

Likewise, companies that have implemented occupational pension schemes or other social welfare schemes and are later affected by a sectoral collective agreement that foresees the implementation of pension commitments through a sectoral SOPS may keep their pension commitments in the pre-existing occupational social welfare schemes.

Associated pension schemes

How does the reform affect associated pension schemes?

Once Act 12/2022 enters into force **it will not be possible to arrange** new associated pension schemes.

What will become of associated pension schemes that are currently in force?

Existing associated pension schemes will have **five years** to be **converted** into simplified occupational pension schemes or individual pension schemes.

The conversion will be agreed by the voluntary decision of the supervisory commission and in the following 12 months, the institutional aspects must be adapted to the legal framework of the pension scheme resulting from the conversion.

Can an associated pension scheme remain as such?

Yes, associated pension schemes that have not been converted in the established five-year term will remain as such until they expire.

Have any specific rules been provided for participants currently covered by an associated pension scheme?

Yes, participants of existing associated pension schemes can transfer their vested rights to an occupational pension scheme, as long as they can become participants of that plan. This transfer of rights can be carried out in the five-year period starting on July 2, 2022 (the date on which Act 12/2022 entered into force).

Other amendments to the regulations governing pension schemes and funds

What measures have been adopted to ensure the fulfillment of the principle of non-discrimination in occupational pension schemes?

The minimum seniority requirement has been amended to ensure that occupational pension schemes fulfill the principle of non-discrimination. From now on, occupational pension schemes cannot require workers to have a **minimum seniority of over a month** to be able to benefit from a scheme (to date, the minimum seniority was set at two years). In any case, the occupational pension scheme may allow access to the scheme to employees with a seniority of less than one month or from the date they start working for the company.

Likewise, occupational pension schemes must include **measures to avoid the gender gap**, such as continuing to pay contributions if employees work reduced hours, and the right to return to the same job held in the case of the suspension of an employment relationship.

Have the limits on financial contributions to social welfare systems changed?

Yes, in two ways:

- First, the €8,500 increase over the general €1,500 annual limit on financial contributions may derive from workers' contributions, and the amount may be equal to the product of multiplying the corresponding company contributions by certain ratios:

Annual contribution amount	Ratio
Equal to or less than €500	2.5
Between €500.01 and €1,000	2
Between €1,000.01 and €1,500	1.5
Over €1,500	1

In any case, the ratio will be 1 if, during the financial year, the worker earns a salary income of over €60,000 from the company making the contribution.

Example

An employee earning employment income under €60,000 and whose company contributes €1,000 to an occupational pension scheme can make individual contributions of up to €2,000 to the same occupational pension scheme (1,000 x ratio 2). The sum of these two amounts (€3,000) may be included in the €8,500 increase.

- Second, self-employed workers and independent contractors are allowed to make annual contributions of up to €4,250 to a SOPS, which will be calculated as an increase over the general limit of maximum annual contribution, set at €1,500.

Tax amendments to promote the subscription of social welfare systems

Have changes been made to the reduction in personal income tax for contributions to social welfare systems?

Yes. Owing to several subsequent changes, the personal income tax base for 2021, 2022 and 2023 will apply maximum amounts with different reductions that will mainly affect individual contributions. Click here to access our legal flash on the General State Budget Act for 2022, which explains the previous amendments.

Thus, Act 12/2022 once again amends the reduction in the personal income tax base for contributions to social welfare systems, **affecting changes to the annual increase of €8,500** over the maximum tax reduction limit of €1,500:

- The €8,500 increase over the general €1,500 limit may come from company contributions and also individual contributions by workers if they are applied to the same social welfare system as the one used by the company **and the amount is**

equal to the product of multiplying the corresponding company contributions by certain ratios:

Annual contribution amount	Ratio
Equal to or less than €500	2.5
Between €500.01 and €1,000	2
Between €1,000.01 and €1,500	1.5
Over €1,500	1

This amendment to the regulation approved for the General State Budget Act for 2022, in cases where the ratio is higher than 1, has led to an increase in the maximum amount of individual contributions by workers to the same social welfare system as the one used by the company entitled to a reduction.

In any case, **ratio 1 will always apply** if, during the financial year, the worker's **total earned income** from the company making the contribution **exceeds €60,000**.

- Likewise, a **maximum annual increase of €4,250** is established over the general reduction limit of €1,500, which may come from **contributions by self-employed workers and independent contractors to SOPS**.

It is specified that the maximum reduction amount on applying these increases will be €8,500 per year.

Second, the **financial limit** of company contributions to social welfare systems provided under Additional Provision 16 of the Personal Income Tax Act has been amended in the same terms as above, as mentioned in the previous section.

Third, this brings the tax regime of **Pan-European Pension Products** regulated under Regulation (EU) 2019/1238 into line with that of the pension schemes as follows:

- Contributions made to a **Pan-European Pension Product** may reduce the general personal income tax base in the same terms as contributions made to pension schemes.
- Payments received by **Pan-European Pension Product** beneficiaries will be subject to personal income tax as income from employment and they will not be subject to inheritance and gift tax.
- Personal income tax payers that claim early withdrawal (whether full or partial) of economic rights held in a **Pan-European Pension Product** in circumstances different to those provided under the regulations governing pension schemes must restore in the taxable base any reductions that were wrongly applied by filing supplementary tax returns including late payment interest. Also, any amounts

received in excess of the withdrawn contributions will be taxed as employment income in the tax period in which they are received.

Have any amendments been approved affecting wealth tax with regard to the treatment of economic rights in social welfare systems?

Yes, with regard to wealth tax, the new regulations extend the exemption on economic rights in social welfare systems to economic rights resulting from contributions to **Pan-European Pension Product**, applicable from tax period 2023 and onwards.

Has any corporate income tax incentive been approved for employer contributions to occupational pension schemes?

Yes, a **new tax credit on the gross tax due** has been introduced for tax periods starting July 2, 2022, for company contributions attributed to workers with a gross annual employment income under €27,000 and that correspond to occupational pension schemes, corporate social welfare schemes, occupational pension schemes subject to Directive (EU) 2016/2341 and welfare mutual insurance entities acting as social welfare schemes arranged by the company.

The **tax credit is equal to 10%** of the attributed company contributions.

In the case of workers that earn gross employment of at least €27,000, the tax credit will apply to the proportional amount of the company contributions corresponding to the gross annual remuneration of €27,000.

What about other taxes?

The acquisition of securities by employment pension funds, welfare mutual insurance entities and non-profit voluntary social welfare entities will be exempt from **financial transaction tax**.

When will the approved tax changes come into effect?

Although the entry into force took place on July 2, 2022, the date on which the changes will take legal effect on taxes subject to a tax period is not specified. Therefore, changes affecting personal income tax, corporate income tax and wealth tax will take effect in the tax periods starting from July 2, 2022, pursuant to article 10.2 of the General Tax Act.

Changes to financial transactions tax will take effect from July 2, 2022.

Reduction of employer social security contributions to promote the subscription of occupational pension schemes

Are company contributions to occupational pension schemes offset with social security payments?

Yes. Companies that make contributions to occupational pension schemes can reduce their social security payments for common contingencies by the **increased amount** deriving directly from the company contribution paid monthly into occupational pension schemes.

What will the reduction consist of?

The maximum amount of these contributions to which a 100% reduction will be applied is the result of multiplying by 13 the amount the company pays for common contingencies (23.6%) applied to the minimum daily contribution base for group 8 (€38.89) of the Social Security General Regime.

For additional information, please contact our *Knowledge and Innovation Group* lawyers or your regular contact person at Cuatrecasas.