



International Solutions Edition #2

December 2021

EDITO

A long time expected reform for Captives in France

A discussion around Paris being the next place to be in terms of financial attractiveness is not something new.

The Department of Finance would definitely prefer to see companies of all sizes opting for a self insured solution through an owned entity, an insurance captive set up in France, rather than abroad. The legal and tax framework has never been a tempting one though. Until now, only 8 captives are located in France, versus 200 in Luxembourg.

It was expected that before the end of the year, the Ministry of Finance would make some announcements to reform the captives' landscape, and facilitate its creation on the French soil. The pandemic has indeed precipitated the need for companies to bear their own risks, as some insurers refused to do it, or at unaffordable costs.

At the last minute, the Finance Department declined the adoption of the text under the project of finance law for 2022 (PFL 2022), stating that the project first needed the European Commission approval.

As much as it can be disappointing, the EC's authorization is compulsory to implement the reform. And French multinationals need to cover important risks such as operating losses, cyber, and other emerging risks.

So let's hope that the the EC's opinion will be a favorable one, and that soon, some of our large French multinationals will be in a position to set up their own insurance or reinsurance company in their own country. More than 50 of them are waiting...

Dominique EDMÉ
Head Of International Solutions





SUMMARY

USA 01 IRS Issues Affordability Percentage Adjustment for 2022.

Canada 02 Federal Bill C-30 to implement provisions and other measures receive royal assent. Measures to create jobs and growth taken.

Americas

Australia 03 Superannuation Stapling from November 1st 2021.

China 04 Pilot pension program for individuals. Statutory list of critical illnesses revised.

Asia Pacific

France 05 Complex renewal negotiations for health policies.

Germany 06

- Liabilities and book reserves accounting.
- Direct insurance liabilities transfer.
- Stage 2 of Occupational Pensions Improvement Act.

The Netherlands 07 Pension reform for Defined Benefits. Impact of divorce rules changes on pension.

Portugal 08 Quick overview of benefits.

Romania 09 Guarantee Fund indemnities.

Ukraine 10 A mandatory second pillar pension.

UK 11 National insurance contributions raise.

Europe

United Arab Emirates 12 New Labour Law to be effective on February 2, 2022.

Kenya 13 Introduction of universal health care and tax relief on contributions.

South Africa 14 Pension Fund Act developments.

Middle East & Africa



IRS Issues Affordability Percentage Adjustment for 2022

The Internal Revenue Service (IRS) has released Rev. Proc. 2021-36, which contains the inflation adjusted amounts for 2022 used to determine whether employer-sponsored coverage is “affordable” for purposes of the Affordable Care Act’s (ACA) employer shared responsibility provisions and premium tax credit program.

Under the ACA, applicable large employers (ALEs) must offer affordable health insurance coverage to full-time employees. If the ALE does not offer affordable coverage, it may be subject to an employer shared responsibility payment. An ALE is an employer that employed 50 or more full-time equivalent employees on average in the prior calendar year.

Coverage is considered affordable if the employee’s required contribution for self-only coverage on the employer’s lowest-cost, minimum value plan does not exceed 9.61% of the employee’s household income in 2022.

An ALE may rely on one or more safe harbors in determining if coverage is affordable: W-2, Rate of Pay, and Federal Poverty Level..





Act to implement certain provisions of the budget tabled in Parliament on April 19, 2021 and other measures received royal assent

On June 29, 2021, the federal Bill C-30, An Act to implement certain provisions of the budget tabled in Parliament on April 19, 2021 and other measures received royal assent.

The bill implements a number of measures that were introduced in the 2021 federal budget. The passage of Bill C-30 enacts the government's budget plan to finish the fight against COVID-19, create jobs and growth, and ensure a robust economic recovery that brings all Canadians along.

Some of the measures :

- Negotiated contribution pension plans: Administrators of negotiated contribution plans will be required to establish both a funding policy and a governance policy effective as of a future date that is to be set by proclamation. Negotiated contribution plans that have already been registered will be required to establish funding and governance policies within one year of the effective date.
- Emergency top up of \$5 billion for provinces and territories – specifically \$4 billion through the Canada Health Transfer to help provinces and territories address immediate health care system pressures and \$1 billion to support vaccine rollout campaigns across the country.
- Increase to Old Age Security (OAS) by 10% for seniors age 75 and older beginning with payments in the quarter commencing on July 1, 2022.
- Enhanced Employment Insurance sickness benefits which will increase from 15 to 26 weeks.
- Extension of important income support for Canadians through the Canada Recovery Benefit and the Canada Recovery Caregiving Benefit.

Australia

Superannuation Stapling from November 1st 2021

Introduced as part of the recent Your Future, Your Super Federal government measures, superannuation stapling will apply from 1 November 2021.

Why are the Changes Happening?

Under the new measures, working Australians will belong to one superannuation fund for life unless they choose otherwise. The measures aim to reduce the number of superannuation accounts people may acquire throughout their working life, minimising the likelihood of additional fees for holding multiple accounts, lost superannuation, and lower interest due to unconsolidated funds, all of which erode the superannuation balance.

What do the Changes Mean?

From November 1st, 2021, Superannuation Stapling rules come into effect for all new hires which will determine the superannuation fund into which employers' Super Guarantee Charge (SGC) contributions are made. The Australian ATO will be writing to all employers advising of this change and employers will be required to play a key role in the implementation of the measures.

Making Superannuation Contributions for New Employees

New employees can elect to join their employer's default superannuation fund or elect to have the company contribute into an existing fund they hold.

Employees who wish to join their employer's default fund can join even if they have a stapled fund. The ATO is responsible for identifying an employee's stapled super account and provide employers with the required account information to contribute to that fund. A stapled fund is usually the superannuation fund which received the employee's most recent contribution.

In essence, the default superannuation fund is no longer the fallback position if a new employee does not nominate a fund of choice.



Launch of a pilot pension program for individuals

China launched a pilot wealth management product scheme for retirees in four cities in September 2021, the latest move to build a multi-level pension insurance system. The pilot was rolled out in the central city of Wuhan, eastern coastal city Qingdao, western city Chengdu, and southern city Shenzhen on Sept. 15.

The products will be sold by wealth management units of the Industrial and Commercial Bank of China, China Construction Bank, China Merchants Bank and China Everbright Bank. The pilot products will last for a year starting from Sept. 15, and each institution involved can raise up 10 billion yuan (\$1.6 billion) of products.

China's pension insurance system currently includes basic state pension insurance (covers nearly 1 billion residents), corporate annuity insurance and individual commercial pension insurance.

Facing the prospect of underfunding with a rapidly ageing population, CBIRC urged the four institutions to design better wealth management products to help broaden the sources of retirement income.

Statutory list of critical illnesses revision

Since 2007, mainland China's critical illness insurance includes 25 critical illnesses under the Use of Norms of Critical Illness Insurance Definition. After 13 years, the coverage has been further expanded.

The original 25 critical diseases were extended to 28, with new severe chronic respiratory failure, severe Crohn's disease, and severe ulcerative colitis.

For the first time, the definition of mild disease was introduced, and the definition of malignant tumor, acute myocardial infarction, stroke sequelae was scientifically graded, and the definition of 3 mild diseases was added, which expanded the scope of protection.

In addition, in accordance with the latest medical practice, the revised specification relaxes some of the conditions for payment, enhancing consumer protection rights. The scope of protection is further expanded to include, to the extent possible, quantifiable objective or acceptable criteria, reducing subjective judgment and making the identification of critical diseases clearer and more transparent.



France

A difficult context for medical contracts renewals

A study conducted by the French Insurance Federation (FFA) reveals that supplemental health insurers accounts are severely affected. The loss amounts to 900 million euros.

Two reasons leads to this situation:

- The french government have implemented a reform in 2019 that forces insurersto fully reimburse dental, vision and audioprosthesis expenses under certain circumstances (100% Santé) . Although not very well-known in the beginning and thus little used, this reform is now popular amongst insured resulting in a 45% increase of dental care and audioprosthesis expenses in the first half of 2021.
- The second impact on insurer accounts relate to the post covid effect on the medical consumption. Due to lockdown many medical exepenses have been postponed from 2020 to 2021. Medical reimbursements of the first half of 2021 have increased by 9% compared to the first half of 2020 which represents 1.5 billion euros. The insurers have anticipated these impacts increasing premiums for medical contracts by an average of 3% at the start of 2021 representing 550 milion euros, far below the 1.5billion euros borne by insurers. The bill is also burdened by the covid tax that risk carrier must pay on medical premiums, 2.6% on 2020 premiums and 1.3% on 2021 premiums , a total cost estimated at 1.5billion euros.

Medical contributions will be impacted by the observations made above. The 2022 renewals will be the subject of difficult negotiations as insurers are expected to increase medical premiums by 5% on average.



German Association of Accounting Auditors to change their methodology of validating liabilities and book reserves formed by direct pension commitments

The new regulation will have a significant impact on the accounting treatment of claims under reinsurance policies and the associated pension obligations. In the future, a closer look will be taken at whether the promised benefit components and cash flows from the pension commitment are congruent with the benefits from the reinsurance funds.

New actuarial valuation methods will be required for the analysis and comparison of the cash flows, for which more information on the existing reinsurance policies will be needed. The preparation of actuarial reports is likely to become more complex in many cases as a result of the change.

In the case of new pension commitments under the direct commitment scheme, the new valuation rules may be an argument in favor of financing through reinsurance in order to keep the balance sheet effects as low as possible.

New rulings by Ministry of Finance

Modification of procedures concerning transfer of direct pension commitment liabilities into pension trusts. Processual easing concerning tax privileged fund transfers between common insurance – type pension vehicles. Processual easing and tax privileges concerning recovery - recapitalization payments by companies into conventional pension funds.

Stage 2 of Occupational Pensions Improvement Act to be effective from January 2022

The Occupational Pensions Improvement Act (BRSG), which came into force in 2018, regulates the employer's subsidy obligation for salary sacrifice plans concluded from 2019 onwards must be subsidized by the employer to the tune of 15%, provided that the employer saves on social security contributions.

From 2022, the subsidy obligation will also apply to legacy contracts. Employers who want to comply with the law now have work to do. Every single contract must be examined and checked. The government are considering lowering the social security ceiling in order to create relief due to Covid impact on companies' operational costs and personal salary. The social security ceiling (BBG) this year is 85,200 Euros.

This limit should also be lowered due to the Coronavirus pandemic and the lower average incomes during this period, according to the draft of the governing parties from January 2022. The new limit of the BBG would then be 84,600 euros / year. Even if the reduction may seem visually small, the lowering of the income threshold would have an impact on occupational pension schemes.

Since tax incentives for occupational pension plans are directly linked to the income threshold, a reduction would have a negative impact on tax-free contributions to occupational pension plans. The basic idea of relieving the burden on citizens because incomes stagnated or even fell during the Corona pandemic is perfectly understandable.

However, this would be weakening the important pillar of occupational pension provision, as contributions can no longer be paid into a direct insurance policy, for example, at the same level as last year, free of tax or social security contributions. This concerns a draft so far which is applied in January 2022. An exemption for contributions to deferred compensation is to be desired.



The Netherlands

Pension Reform for DB

The pending pension reform is still expected however not before 1/1/2023. As part of this change, defined benefits schemes will no longer be allowed, and must be ended by 1/1/2027 at the latest. Providers are still willing to renew existing DB schemes, however new DB schemes can no longer be set up. In other words, all new schemes are based on defined contributions.

Impact of divorce rule changes on pension

From July 1st 2022, the rules change in case of divorce or in case of a split up with a partner. The rules are slightly different when you are not married but in general both parties receive 50% of the period they were together. Under the current law, the full value of partner pension is granted to the married partner and under the new law this will be 50%. Moreover the 50% is no longer tied to the ex-partner which is considered to be an improvement.



Medical policies

As a consequence of the Covid-19 pandemic and new investments being made in Portugal, the number of companies offering Medical Plans to their employees has grown to 80%. Older existing medical plans need benefits upgrades to be in par with more modern plans.

Severe illness additional benefit is in demand and the market is offering excellent solutions. Underwriting has been adjusted to GDPR and is getting more and more digital.

Life Policies

Employers have been increasing life and permanent disability benefits, normally insured amounts are around 14 x monthly salary, now the average is 36 times.

Pension Plans

As with many other countries in the EU, Portugal social security is struggling to keep pension benefits at a current level and newer generations are requesting employers to offer pension plans. There aren't yet many solutions available in the market, but more options are expected in the near future.



Legislative change in the compensation by the Guarantee Fund

A change of regulation was implemented by the government with the Emergency Ordinance 102 effective September 22nd 2021, as a response to the recent bankruptcy of the biggest MTPL player.

The Emergency Ordinance defines more clearly in art.7 the “insurance creditor”. It is now clearly stated that the right of an insurance creditor to be indemnified by the Guarantee Fund in case of bankruptcy of an insurer, emanates from the rights born from an insurance contract (policy) signed with the bankrupted insurer. And the maximum limit of indemnity granted by the Guarantee Fund to an insured/beneficiary is applicable per claim file and not per creditor/insured as it was interpreted in the past. The art.21 introduces a new payment term for indemnities, within 60 days from the date when the insolvent insurer’s license has been withdrawn by the regulator. Previously the Guarantee Fund could start paying the claims only after the bankruptcy was irrevocably declared by a Civil Court, such process taking more than 12 months.

In addition, the limit of indemnity per insurance creditor/claim file has been increased from RON 450,000 up to RON 500,000.

In parallel there were two other major changes compared with the old provisions, as follows:

- For the first time in the MTPL history, the insured are entitled to cancel the policy before its regular maturity date, and to enter into a new insurance agreement with a viable insurer.
- If the insured chooses not to cancel the policy but to keep it ongoing, the law says that the validity of the MTPL policy will automatically cease in 90 days from the date when the bankruptcy is officially declared by a Civil Court, or at its normal maturity date, whichever first occurs.



UK

National Insurance contributions are to rise by 1.25 percentage point from April 2022. The aim is to improve the health system, fund the costs of social care, and deal with the NHS operations and treatments postponed during the pandemic.

Systemic deficiencies in the health system, in particular staff shortages, have created a challenge for dealing with the COVID-19 pandemic.

Ukraine

The Pension Fund of Ukraine recently announced plans to revise the pension system and introduce a mandatory funded pension (pillar II).

Funding would be done with Employer contributions of 2% of the employee's qualifying earnings and employee contributions of 1% of the employee's qualifying earnings.

The Draft Law on Compulsory Accumulative Pension Provision is currently awaiting consideration in parliament. The Law is currently estimated to come into force from 2023.



MIDDLE EAST & AFRICA

United Arab Emirates

New UAE Labour Law (Federal Decree Law No. 33 of 2021)

On 16 November 2021, significant changes were announced to employment law in the UAE with the introduction of the new UAE Labour Law (Federal Decree Law No. 33 of 2021) (New Law), which will come in force on 2 February 2022. There are only two current exceptions to the overarching application of the New Law. The first is in the Dubai International Financial Centre, which is a separate jurisdiction with its own employment legislation and the second exception is the Abu Dhabi Global Market, which also has its own employment legislation.

Fixed-term contracts

The new law defines a fixed-term contract as one not exceeding three years, with the permissibility for it to be renewed for a similar or lesser duration. Significantly, the new law stipulates that unlimited-term employment contracts are to be converted into fixed-term employment contracts within one year from the date the new law comes into force. The implementation of this amendment will be an important consideration for all employers across the UAE.

The new law also stipulates that UAE employers will have flexibility in paying employees in any currency, subject to the agreement between the parties in the employment contract.

Discrimination, bullying and harassment

Importantly, the New Law has introduced anti-discrimination provisions to fight against discrimination based on race, colour, sex, religion, national origin, ethnic origin or disability, and provides employees with protection against inequality of treatment or opportunities in the workplace. The new law also provides employees with protection against sexual harassment, bullying and any form of verbal, physical or psychological violence in the workplace. An employer may be liable to fines of between AED 5,000 to AED 1,000,000 for violation of the provisions of the new law and its Executive Regulations and implementing resolutions.

End of service gratuity

Expatriate employees in the UAE are entitled to end of service gratuity upon termination of employment. Under the current law, end of service gratuity is calculated at 21 calendar days' basic pay for each year of the first five years of service and 30 calendar days' basic pay for each additional year of service. The new law stipulates that end of service gratuity is to be calculated based on working days.

Maternity leave

Under the current law, a woman with one year's continuous service with her employer is entitled to 45 calendar days' maternity leave with full pay. For less than one year's service the entitlement is 45 calendar days at half pay.

Under the new law, maternity leave entitlement has been increased to 60 calendar days, paid as follows:

- the first 45 days at full pay, and
- the remaining 15 days at half pay.

In contrast to the current law, the full maternity pay is not subject to the employee having completed one year of continuous service with her employer.



Kenya

The National Hospital Insurance Fund (Amendment) Bill, 2021 was passed in the National Assembly on September 28. A legal framework is now set to introduce a universal healthcare under the National Health Scheme. The contributions will be paid by all formal and informal sector workers enrolled from age 18. This will result by expanding the NHIF member contributor base from almost 8 million in 2018 to around 24 million.

Personal tax relief on NHIF member contributions is granted from 1 January 2022. This is on the same basis as the relief granted to qualifying life insurance premiums, and amounts to 15% relief up an aggregate cap of KES 60,000 per year.



South Africa

Pension Fund Act Developments

Section 13A of the Pension Funds Act (“the Act”) deals with the payment of contributions by employers to retirement funds. It sets out when contributions are due, how payments are to be effected, prescribed formalities which should be followed and personal liability of persons involved in the management of participating employers.

The Office of the Pension Funds Adjudicator (“OPFA”) receives many complaints from fund members whose benefits have not been fully paid by the participating employer.

In Communication 1 of 2021, the Adjudicator’s proposed solution to the problem is that the OPFA proposes that it will, in relation to arrear contributions, conduct investigations that will allow it to issue determinations from 1 December 2021 that are “sounding in money”, or where a specific amount of money is ordered to be paid. The OPFA has the power in terms of the Act to make an order directing payment of a specific amount by the employer to the fund. This means that the fund may enforce the OPFA’s determination/order by obtaining a writ of execution from a court if the employer does not comply with the determination and pay the arrear contributions as ordered by the OPFA. This will be less time consuming and less costly for funds.



Contact



Dominique Edme
dominique.edme@s2hgroup.com
01 44 20 49 66



SIACI SAINT HONORE
39 rue Mstislav Rostropovitch 75017- Paris



www.s2hgroup.com
+ 33 (0)1 4420 9999

