Spain

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1. Does the state provide a pension, retirement income or social security program of some type?

In Spain, the state social security system covers retirement income, survivor benefits, and disability benefits.

Contributions to the social security system are calculated as a percentage of salary up to the maximum contribution base for 11 different categories of worker. Of these, workers under age 18 have the lowest contribution base, and engineers and university graduates have the highest; the maximum annual contribution base for 2017 was EUR 45,014.40.
This threshold is usually subject to annual indexation. The employer contribution rate is 23.6%, while the employee contribution rate is 4.7%. Employers are also required to contribute 6.3% in respect of unemployment and other benefits (the employee contribution is 1.65%), plus an additional contribution in respect of occupational risk coverage.

Spain

The contribution rate for the latter is determined by the specific risks of a particular occupation.

Two caps apply to the social security system. The first is the maximum annual contribution base referred to above. Salary amounts in excess of this cap are not taken into account when calculating contributions or when determining benefits. The second cap applies to benefits; beyond a certain amount no benefits are paid. For employees with salaries below the maximum annual contribution base, though, social security benefits amount to a relatively generous proportion of final salary (in many cases around 75% to 80%).

2. Are employers required to maintain retirement plans/schemes, and what types of retirement plans/schemes are employers permitted or required to maintain?

Establishment of a retirement plan/scheme in addition to the social security system is completely voluntary for employers unless otherwise required under a collective bargaining agreement. Under the Royal Decree of 1999, pension promises to employees can be met through group insurance contracts and/or the creation of a pension plan. Pension plans typically must be financed through pension funds, which have no independent legal status or purpose other than to implement pension plans. Pension arrangements can also, in exceptional circumstances, be implemented through the establishment of book reserves. Arrangements implemented through group insurance contracts and book reserves are not referred to as pension plans and are not subject to pension plan legislation.

Originally, most pension arrangements were defined benefit plans with very high income replacement levels (with combined pension and social security benefits ranging from 80% to 100% of final earnings). Benefits were frequently based on final salary and did not depend on years of service, although once in payment, benefits were not indexed. Since the mid-1980s, many defined benefit plans have closed to new participants, and in many cases have been substituted by defined contribution plans.

Employee pension plans are now typically defined contribution plans. Around one-third of plan members participate in hybrid plans that combine defined benefit and defined contribution elements. A small portion of plan members belong to plans that are exclusively defined benefit.

Defined benefit plans are typically final average pay plans, funded solely by the employer. Defined contribution plans are now the norm, and employers typically pay 65% to 80% of the contributions to these plans, with employees paying the rest. It is becoming increasingly typical to link employer contribution levels to employee contribution levels. In such cases, the plan offers employees a choice of contribution levels (minimum, medium and maximum), and provides an employer match commensurate with the level of contribution chosen by the employee. It is important to note that most defined contribution plans pay a lump sum on retirement rather than an annuity.

Spain

3. What are the principal statutes governing retirement plans/schemes that cover a broad cross-section of the workforce and what are the material requirements applicable to such plans/schemes?

Various pieces of legislation govern pension plans/schemes.

Generally speaking, pension plans/schemes are subject to the following principles and requirements:

(a) Non-discrimination – Pension plans must open participation to all employees with two years' service, regardless of whether the employment contract is indefinite or permanent.

(b) Capitalization – Pension plans must be implemented using a financial or actuarial system of capitalization. As a result, benefits from the plan will be paid strictly in accordance with the calculations made by these systems.

(c) Irrevocability of contributions – Employer contributions to pension plans are always irrevocable.

(d) Employee rights – Employer contribution amounts and benefit calculation formulas under the plan create rights (enforceable by the employee) to particular benefit amounts.

(e) Externalization to a pension fund – All employer liabilities arising from pension plans must be externalized to a pension fund.

Employer and employee contributions to pension plans are statutorily capped at EUR 8,000 (in 2017) in the aggregate.

4. What are the key features of the tax framework that applies to retirement plans/schemes?

Employer and employee contributions to a pension plan are tax-free for employees up to the smaller of:

- 30% of the employee's net income from labor and economic activities; and

- EUR 8,000.

Benefits paid to employees from pension plans are taxed as income. To encourage employees to take their benefits in the form of an annuity, the tax advantages associated with lump sum payments have been recently removed.

Employer contributions are also tax-deductible for the employer provided certain conditions are met.

Spain

5. If an employer adopts a retirement plan/scheme, are employer contributions required?

Employer contributions must be made according to the terms of the plan/scheme. Depending on the nature of the plan/scheme, the employer contribution will consist of either a fixed contribution (for defined contribution plans) or a variable contribution calculated according to the plan/scheme's terms as well as actuarial reports (for defined benefit plans). Failure to pay required contributions or to meet minimum funding requirements can result in the employer being fined by both the labor and pensions authorities. Moreover, employee representatives and/or individual employees can bring actions in the labor courts for payment of outstanding contributions.

6. What are the material rules governing retirement plan/scheme investments, and what liabilities attach for failure to satisfy those requirements?

Good governance of occupational pension plans is the responsibility of three different bodies:

(i) the plan's managing body ("*Entidad Gestora*"), which is responsible for investment of the plan's assets;

(ii) the plan trustee ("*Entidad Depositaria*"), which acts as a custodian to safeguard the plan's assets; and

(iii) the plan's supervisory board ("*Comisión de Control*"), made up of an equal number of employee and employer representatives.

Legislation gives the supervisory board very broad powers, including: (i) representation of the plan (for example, in the case of proceedings in the labor courts); (ii) monitoring the plan's compliance with certain obligations and supervision of the managing body's activities; (iii) replacement of the managing body or the trustee; (iv) vetoing agreements or actions that are against the plan's interests; (v) approval of annual accounts; and (vi) setting the plan's investment criteria. Many of the functions carried out by the managing body are delegated to it by the supervisory board, such as setting investment criteria.

In the event of breach of its duties, the supervisory board can incur civil and, in the most extreme cases, criminal liability.

7. What reporting, disclosure and employee consultation rules apply and how are they enforced?

The Ministry of Economy, through the General Directorate of Insurance and Pension Funds, oversees the proper management of pension plans.

The General Directorate of Insurance and Pension Funds requires managing bodies, trustees, and supervisory boards of pension plans to carry out extensive reporting and to comply with specific disclosure requirements. In the event of

Spain

noncompliance, the General Directorate of Insurance and Pension Funds may utilize a number of enforcement powers, including the power to issue compliance notices and fines.

8. What restrictions apply if the employer wishes to alter the terms of a retirement plan/scheme?

Amendments to the terms of a retirement plan/scheme must be carried out in accordance with any specific procedures and rules set out in the plan. In such cases, amendments must be adopted directly by the plan's supervisory board.

If, however, the plan does not contain any amendment provisions, amendments are governed by general employment law rules. In these cases, amendment of the terms of a retirement plan/scheme could qualify as a substantial change of employee working conditions under Spanish labor law. Employers can make substantial changes to employee working conditions provided that there are economic, organizational, production, or technical reasons that justify the change(s).

Spanish labor law provides a procedure that employers must follow, depending on the number of employees that will be affected by the proposed change(s) in a period of 90 days:

- if less than 10% of employees are affected, then employees and employee representatives must be given 15 days' prior notice; and

- if 10% of employees or more are affected, then consultation with employee representatives is also required.

In addition, employees are entitled to terminate their employment contracts as a result of any substantial changes, with severance pay equivalent to 20 days' salary per year of service, up to a maximum of nine months' pay.

However, if the plan has been established as a result of a collective bargaining agreement, the employer must follow a specific opt-out procedure called a "*descuelgue*." This opt-out procedure requires a period of consultation with employee representatives and, if no agreement is reached, will end in an arbitration award.

9. Under what circumstances may an employer withdraw from or terminate a plan/scheme, and what liabilities may arise in connection with such withdrawal or plan/scheme termination?

Unilateral withdrawal from or termination of a pension plan is only permitted in the event of a liquidation of the employer.

In all other circumstances, the unilateral withdrawal from or termination of a retirement plan/scheme would qualify as a substantial amendment to employees' working conditions, and the employer must follow the procedures outlined in question 8 above.

Spain

Prior to termination of a retirement plan/scheme, it is a legal requirement that all employees' individual pension entitlements are guaranteed and transferred to another plan.

10. Can employees take their pension/retirement benefit entitlement with them if they change jobs?

Employees are not entitled to transfer their pension entitlements to another pension plan upon termination of employment unless the rules of the pension plan expressly permit this.

But if the rules of the pension plan so allow, employees who have left the employer are entitled to continue making voluntary contributions to the plan provided that they have not previously transferred their pension entitlement to a different plan.

11. Do pension/retirement benefit payments need to be adjusted/increased after retirement?

No, not unless the rules governing the retirement plan/scheme require otherwise.

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