

THE NEW REGULATIONS APPLYING TO NATIONAL INSURANCE CONTRIBUTIONS

National insurance contributions on executive and shareholder remuneration (pay + dividends) have been substantially increased by the National Insurance Funding for 2013 Act, No. 2012-1404, of 17th December 2012. Until 31st December 2012, all dividends were subject to national insurance contributions on unearned income¹ but henceforth, under Article L136-3 of the National Insurance Code, amended by Act No. 2012-1404, **certain dividends² are considered as pay received by executives and shareholders and are therefore subject to the national insurance contributions on pay.** The Act also abolished the ceiling on health insurance contributions payable by the self-employed and all this means that businesses must rethink the way that they have been structured until now.

I. The national insurance scheme covering executives and shareholders

The national insurance scheme to which someone belongs is determined by their national insurance status: salaried workers and those considered as equivalent to salaried workers belong to the general national insurance scheme, while non-salaried workers belong to the self-employed scheme and in some circumstances a shareholder or chief executive may not belong to any compulsory national insurance scheme.³

a) General scheme membership of salaried workers and equivalent

The following belong to the general scheme under the National Insurance Code:

- salaried chief executives of limited liability companies under sole proprietorship that do not own shares personally or belong to a management group with a majority stake;
- salaried chief executives of limited liability companies with a minority or 50% stake;
- salaried shareholders of limited liability companies (not chief executives) in the case of a subordinate relationship and no interference in the management of the firm;
- chairmen and executives of simplified corporations (*sociétés par actions simplifiées*);
- chairmen of boards of directors, chairmen & managing directors and managing directors of limited companies (*sociétés anonymes*);
- chief executives of general partnerships that do not own shares;
- chief executives of ordinary limited partnerships or limited partnerships limited by shares that do not own shares.

b) Non-salaried workers' membership of the self-employed national insurance scheme

The following belong to the self-employed national insurance scheme under the National Insurance Code:

- self-employed individuals (craftsmen, traders, industrialists and professionals) and self-employed individuals with limited liability;

1) National insurance contributions on unearned income were increased from 13.5% to 15.5% on 1st January 2012.

2) See Appendix V for the fiscal definition of dividends.

3) See Appendix I for a summary table.

- sole shareholders working within a limited liability company under sole proprietorship and chief executives who do not own shares personally but belong to a management group with a majority stake;
- chief executives with a majority stake / salaried shareholders (not chief executives) in the absence of a subordinate relationship with the firm / limited liability company shareholders acting as *de facto* chief executives;
- general partnership shareholders;
- shareholders in ordinary limited partnerships or limited partnerships limited by shares.

c) Non-membership of a general national insurance scheme

In accordance with case law or the position of national insurance agencies, certain executives and shareholders do not belong to any general national insurance scheme:

- sole shareholders of limited liability companies under sole proprietorship not working within the firm;
- non-salaried chief executives of limited liability companies under sole proprietorship that do not own shares personally or belong to a management group with a majority stake;
- non-salaried chief executives of limited liability companies with a majority or 50% stake / non-salaried shareholders (not chief executives) in limited liability companies;
- chairmen and deputy chairmen of supervisory boards of limited companies (*sociétés anonymes*).

II. National insurance contributions payable on dividends depending on the national insurance scheme¹

The dividends received by executives and shareholders belonging to the general scheme or not belonging to any national insurance scheme are subject solely to national insurance contributions on unearned income and the same applies to dividends paid to members of the self-employed scheme not exceeding 10% of the shareholders' equity of the distributing firm (including issue premiums and shareholders' current accounts) but dividends distributed to executives / shareholders belonging to the self-employed scheme that exceed 10% of the shareholders' equity of the distributing firm (including issue premiums and shareholders' current accounts) are subject to national insurance contributions on pay.

a) Dividends paid to salaried workers and equivalent belonging to the general scheme

Under Article L136-6 of the National Insurance Code, executives / shareholders with the status of salaried workers and equivalent and therefore members of the general scheme that receive dividends are, irrespective of the amount, solely liable for national insurance contributions on unearned income,² which were increased from 13.5% to 15.5% on 1st January 2012 and are formed by the following:

- a general welfare contribution (CSG) of 8.2% (Article L136-8 of the National Insurance Code);
- a welfare debt reimbursement contribution (CRDS) of 0.5% (Article 19 of Order No. 96-50 of 24th January 1996);
- a national insurance deduction of 4.5% (Article L245-16 of the National Insurance Code), plus an additional contribution of 0.3% (Article L14-10-10-4.1 of the Welfare and Family Action Code);
- a solidarity contribution of 2% (Article 1600-0.S of the General Tax Code).

Dividends paid to salaried workers and equivalent are not subject to national insurance contributions on pay.

1) See Appendix II for a summary table.

2) See detailed example in Appendix VI.

b) Dividends paid to non-salaried workers belonging to the self-employed national insurance scheme

Act No. 2012-1404 introduced a **distinction in respect of the contributions due for dividends paid to executives / shareholders with the status of non-salaried workers and therefore belonging to the self-employed national insurance scheme, whereby such dividends not exceeding 10% of the shareholders' equity,¹ including issue premiums² and shareholders' current accounts,³ are considered as investment income and are subject solely to national insurance contributions on unearned income at a rate of 15.5% (Article L136-6 of the National Insurance Code), while those exceeding 10% of the shareholders' equity (including issue premiums and shareholders' current accounts) are considered as pay (Articles L136-3 and L131-6 of the National Insurance Code) and accordingly subject to self-employed national insurance contributions on pay, which are formed by the following:**

- a general welfare contribution (CSG) of 7.5% on work and replacement income (Article L136-8 of the National Insurance Code);
- a welfare debt reimbursement contribution (CRDS) of 0.5% (Article 19 of Order No. 96-50 of 24th January 1996);
- health / maternity insurance contributions of 6.5% on all taxable professional income +0.7% (for traders and craftsmen) up to a limit of five times the annual national insurance ceiling;⁴
- basic / supplementary pension insurance contributions at rates varying according to the type of work;
- contingency insurance contributions at rates varying according to the type of work;
- vocational training contributions at rates varying according to the type of work.⁵

Note that Act No. 2012-1404 removed the ceiling on health insurance contributions for non-salaried workers: previously there were rates of 6.5% applying to the band of income up to the annual national insurance ceiling, 5.9% for income between the ceiling and five times the ceiling and zero thereafter **but now the 6.5% rate applies to all pay received** so the health insurance contributions of non-salaried workers earning more than €185,160 per annum will significantly increase.

c) Dividends paid to executives and shareholders not covered by any national insurance scheme

Dividends paid to people not covered by any general national insurance scheme are subject to unearned income contributions of 15.5% on all distributed dividends (Article L136-6 of the National Insurance Code).

Conclusion:

The new tax and national insurance treatment of dividends is significantly penalising small and medium-sized businesses because the executives and shareholders of firms structured as limited liability companies, limited liability companies under sole proprietorship and general partnerships, plus self-employed individuals, are the ones bearing the brunt of the reform of the national insurance treatment of dividends introduced by the National Insurance Funding for 2013 Act, whereas the executives and shareholders of firms structured as limited

1) Shareholders' equity includes capital increases approved during the corporate term and the capital contributions made by the shareholders upon the firm's incorporation, though **taking account solely of contributions in kind** (excluding intangible assets not valued by an auditor or not the subject of a cash transaction) and **fully paid-up capital contributions**.

2) Issue premiums not incorporated in the share capital, i.e. paid to new shareholders and assigned to a specific account.

3) Taking account of the annual average balance on the account concerned, i.e. the total average monthly balances divided by the number of months in the accounting period in accounts held on a full ownership or usufruct basis by a non-salaried worker, his/her spouse or civil partner or their non-emancipated minor children (Article L131-6 of the National Insurance Code).

4) The annual national insurance ceiling is €37,032 in 2013.

5) See table in Appendix III for non-salaried workers' contribution rates.

companies (*sociétés anonymes*) and simplified corporations (*sociétés par actions simplifiées*) are barely affected.

Contributions will increase sharply for executives and shareholders belonging to the self-employed national insurance scheme. Previously the tax and national insurance treatment of executives' and shareholders' remuneration (pay + dividends) could be optimised by distributing some of the profits in the form of dividends but this no longer works since the National Insurance Funding for 2013 Act came into force so, to reduce the impact of the new national insurance treatment of remuneration on firms and their shareholders and executives, EJA recommends that **executives and shareholders covered by the self-employed national insurance scheme¹ should either increase the share capital, notably by incorporating reserves, or change the corporate form so that they have the status of salaried workers and equivalent, enabling the distribution of dividends not subject to national insurance contributions on pay, though the expediency of any such conversion must be examined extremely carefully on a case-by-case basis.**

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1) See Appendix II.

**Appendix I: National insurance treatment of executives' and
shareholders' remuneration**

Status	Non-salaried worker	Salaried worker / manager or equivalent	None
National insurance scheme	Self-employed	General	None
National insurance contributions on dividends (rate: 15.5%)	Under 10% of the distributing firm's shareholders' equity + issue premiums + shareholders' current accounts	On all distributed dividends	On all distributed dividends
National insurance contributions on pay	Above 10% of the distributing firm's shareholders' equity + issue premiums + shareholders' current accounts	Solely on pay and never on dividends	Solely on pay and never on dividends

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Appendix II: National insurance schemes covering shareholders / executives depending on the corporate form

Corporate form / National insurance scheme	Self-employed individuals / Self-employed individuals with limited liability	Limited liability companies under sole proprietorship	Limited liability companies	Simplified corporations (<i>sociétés par actions simplifiées</i>)	Limited companies (<i>sociétés anonymes</i>)	General partnerships	Ordinary limited partnerships / Limited partnerships limited by shares
General	-	Salaried chief executives that do not own shares personally or belong to a management group with a majority stake	Salaried chief executives with a minority or 50% stake / Salaried shareholders (not chief executives) in the case of a subordinate relationship and no interference in the management of the firm	Chairmen and executives	Chairmen of boards of directors, chairmen & managing directors and managing directors	Chief executives that do not own shares	Chief executives that do not own shares
Self-employed	Self-employed individuals and self-employed individuals with limited liability	Sole shareholders working within the firm / Chief executives that do not own shares personally but belong to a management group with a majority stake	Chief executives with a majority stake / Shareholders acting as <i>de facto</i> chief executives / Salaried shareholders (not chief executives) in the absence of a subordinate relationship	-	-	Shareholders	Shareholders
None	-	Sole shareholders not working within the firm / Non-salaried chief executives that do not own shares personally or belong to a management group with a majority stake	Non-salaried chief executives with a majority or 50% stake / Non-salaried shareholders (not chief executives)	-	Chairmen and deputy chairmen of supervisory boards	-	-

Appendix III: Table summarising national insurance contributions on executive and shareholder remuneration

Amount liable to national insurance contributions on pay and salaries

General scheme	Non-salaried workers scheme
<p>Depending on the risks, contributions are calculated on one of the following amounts:</p> <ul style="list-style-type: none"> - the executive's pay; - part of the executive's pay: a multiple of the annual national insurance ceiling (€37,032 in 2013). 	<p>Contributions are calculated on one of the following amounts:</p> <ul style="list-style-type: none"> - the executive's pay; - part of the executive's pay: a multiple of the annual national insurance ceiling (€37,032 in 2013). <p>Compulsory national insurance contributions (health, family allowance and pension) are reincorporated to calculate the CSG and CRDS contributions.</p>

Amount liable to national insurance contributions on dividends

General scheme	Non-salaried workers scheme
<p>Dividends received are subject solely to national insurance contributions on unearned income irrespective of the amount.</p>	<ul style="list-style-type: none"> - Dividends received that do not exceed 10% of the distributing firm's shareholders' equity (including issue premiums and shareholders' current accounts) are subject to national insurance contributions on unearned income. - Dividends received that exceed 10% of the distributing firm's shareholders' equity (including issue premiums and shareholders' current accounts) are included in the amount liable to national insurance contributions on pay.

National insurance contributions on unearned income

CGS [sic – translator]
8.2%
CRDS
0.5%
National insurance deductions
4.5%
Additional contribution
0.3%
Solidarity contribution
2%

Contribution rates for pay (compulsory schemes)

General scheme (managers in firms with fewer than ten employees) Overall rate (employer's and employee's contributions)	Non-salaried workers scheme
CSG & CRDS: 8% on 98.25% of salary	CSG & CRDS: 8% of all pay received (after reincorporating compulsory national insurance contributions)
Health & maternity: 13.55% of total salary	Health & maternity: 6.5% of all pay received <u>Traders and craftsmen:</u> +0.7% for sick pay up to a limit of five times the annual national insurance ceiling
Family allowance: 5.4% of total salary	Family allowance: 5.4% of all pay received
Basic pension insurance: - 15.25% up to the limit of the annual national insurance ceiling - 1.7% of total salary	Basic pension insurance: <u>Traders and craftsmen:</u> 16.85% up to the limit of the annual national insurance ceiling (€37,032 in 2013) <u>Professionals:</u> - 9.75% up to the limit of 0.85 times the annual national insurance ceiling (€31,477 in 2013) - 1.8% between 0.85 and five times the annual national insurance ceiling (between €31,916 and €185,160 in 2013)
Supplementary pension insurance: - 7.5% up to the limit of the annual national insurance ceiling (Arco [<i>sic – translator</i>] scheme) - 20.3% between the annual national insurance ceiling and eight times the ceiling (Agir [<i>sic – translator</i>] scheme) - +0.35% (temporary exceptional contribution) up to the limit of eight times the annual national insurance ceiling	Supplementary pension insurance: <u>Traders and craftsmen:</u> - 7% up to the limit of the annual national insurance ceiling (€37,032 in 2013) - 8% between the annual national insurance ceiling and four times the ceiling (between €37,032 and €148,128) <u>Professionals:</u> variable from €1,184 to €15,397 depending on pay
Vocational training: 0.55% of total salary	Vocational training: - <u>Traders and professionals:</u> 0.25% of the annual national insurance ceiling, i.e. €93 - <u>Craftsmen</u> 0.29% of the annual national insurance ceiling, i.e. €107
Contingency insurance: 1.5% up to the limit of the annual national insurance ceiling	Contingency insurance: - <u>Traders:</u> 1.1% for invalidity and 0.1% for death benefit up to the limit of the annual national insurance ceiling - <u>Craftsmen:</u> 1.6% up to the limit of the annual national insurance ceiling - <u>Professionals:</u> €76, €228 or €380 depending on which option is chosen
Apec scheme: 0.06% up to the limit of four times the annual national insurance ceiling	
AGFF (<i>Association pour la gestion du fonds de financement de l'Agirc et l'Arrco</i>): - 2% up to the limit of the annual national insurance ceiling - 2.2% between the annual national insurance ceiling and four times the ceiling	
Industrial accidents: Variable rate depending on the work	

Example 1
General scheme

a) The chairman of a simplified corporation (*société par actions simplifiée*) receives annual pay of €100,000.

CSG & CRDS
€98,250 x 8% = €7,860
Health & maternity
€100,000 x 13.55% = €13,550
Family allowance
€100,000 x 5.4% = €5,400
Basic pension insurance
€37,032 x 15.25% = €5,647
€100,000 x 1.7% = €1,700
Supplementary pension insurance
€37,032 x 7.5% = €2,777
€62,968 x 20.3% = €12,783
€100,000 x 0.35% = €350
AGFF
€37,032 x 2% = €741
€62,968 x 2.2% = €1,385
Contingency insurance
€37,032 x 1.5% = €555
Apec
€100,000 x 0.06% = €60
Vocational training
€100,000 x 0.55% = €550

Total: €52,363 (i.e. 53.36%)

b) The chairman of a simplified corporation (*société par actions simplifiée*) receives annual remuneration of €100,000 made up of €40,000 in pay and €60,000 in dividends.

Pay:

CSG & CRDS
€39,400 x 8% = €3,152
Health & maternity
€40,000 x 13.55% = €5,420
Family allowance
€40,000 x 5.4% = €2,160
Basic pension insurance
€37,032 x 15.25% = €5,647
€40,000 x 1.7% = €680
Supplementary pension insurance
€37,032 x 7.5% = €2,777
€2,968 x 20.3% = €603
€40,000 x 0.35% = €140
AGFF
€37,032 x 2% = €741
€2,968 x 2.2% = €65
Contingency insurance
€37,032 x 1.5% = €555
Apec
€40,000 x 0.06% = €24
Vocational training
€40,000 x 0.55% = €220

Total: €22,184

Dividends:

CSG
€60,000 x 8.2% = €4,920
CRDS
€60,000 x 0.5% = €300
National insurance deductions
€60,000 x 4.5% = €2,700
Additional contribution
€60,000 x 0.3% = €180
Solidarity contribution
€60,000 x 2% = €1,200

Total: €9,300

Total contributions: €31,484, i.e. 31.48%

Example 2
Self-employed scheme

a) An executive with a majority stake in a limited liability company receives pay of €100,000.

Health & maternity
€100,000 x 6.5% = €6,500 €100,000 x 0.7% = €700
Family allowance
€100,000 x 5.4% = €5,400
Basic pension insurance
€37,032 x 16.85% = €6,240
Supplementary pension insurance
€37,032 x 7% = €2,592 €62,968 x 8% = €5,037
Contingency insurance (invalidity and death benefit)
€37,032 x 1.1% = €407
Vocational training
€36,372 x 0.25% = €91
Total national insurance contributions
€26,967
CSG & CRDS
€126,967 x 8% = €10,157

Total: €37,124 (i.e. 37.12%)

b) An executive with a majority stake in a limited liability company with shareholders' equity of €10,000 receives €40,000 in pay, plus €60,000 in dividends of which €1,000 will be subject solely to national insurance contributions on unearned income and €59,000 will be subject to national insurance contributions on pay.

Pay + the portion of the dividends considered as pay:

Health & maternity
€99,000 x 6.5% = €6,435 €99,000 x 0.7% = €693
Family allowance
€99,000 x 5.4% = €5,364
Basic pension insurance
€37,032 x 16.85% = €6,240
Supplementary pension insurance
€37,032 x 7% = €2,592 €61,968 x 8% = €4,957
Contingency insurance (invalidity and death benefit)
€37,032 x 1.1% = €407
Vocational training
€36,372 x 0.25% = €91
Total national insurance contributions
€26,779
CSG & CRDS
€125,779 x 8% = €10,062

Total: €36,841

Dividends:

CSG
€1,000 x 8.2% = €82
CRDS
€1,000 x 0.5% = €5
National insurance deductions
€1,000 x 4.5% = €45
Additional contribution
€1,000 x 0.3% = €3
Solidarity contribution
€1,000 x 2% = €20

Total: €155

Total contributions: €36,956, i.e. 36.95%

Dividends are distributed **investment income** as defined by Articles 108 to 115 of the General Tax Code paid to private individuals by firms subject to corporation tax. In principle, beneficiaries are liable for income tax on their dividends. Distributed income covers any profits not invested in the firm and funds that are made available to the shareholders even if they do not come from the profits:

- share dividends and income;
- funds taken from the profits or not (funds made available to shareholders, concealed remuneration and benefits, extravagant expenses and funds credited to shareholders' current accounts);
- funds corresponding to increases in declared earnings after tax audits;
- liquidation dividends (difference between the firm's net assets and the actual capital contributions);
- the income specified in Article 124.4 of the General Tax Code (interest paid on shareholders' current accounts).

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