

NEWSLETTER

TRANSFER OF THE SEVERANCE INDEMNITY TOWARDS COMPLEMENTARY PENSION SCHEMES

On October 23, 2006, the Italian Government, the Industry's Association and the Trade Unions reached an agreement on the automatic transfer of the severance indemnity (*trattamento di fine rapporto* – in Italy known also with acronym “TFR”) to complementary pension schemes (the “**Agreement**”).

The provisions set forth in the Agreement are now included in the Bill of Financial Law for 2007 approved by the Senate and under review of the Chamber of the Deputies (“**Bill 2007 Financial Law**”).

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INTRODUCTION

TFR is a sum periodically and mandatory accrued by the employer during the employment relationship and paid to the employee in any case of termination of employment (including resignation, dismissal for just cause or death), notwithstanding the term of the employment contract.

TFR is calculated on the basis of the employee's wages, taking into account not only the basic wage, but also any other compensation periodically paid (e.g., thirteenth and fourteenth months' salary, regular bonus, or the value of any company car). TFR is calculated by adding an amount for each year of service equal to, and in any event not higher than, the amount of the remuneration due for such year divided by 13.5.

In December 5, 2005, the Government enacted the legislative decree n. 252 (the “**Decree**”), which **provides for the development of the complementary pension system through the transfer of the employees' TFR starting from 2008.**

The Agreement sets forth understandings aiming at:

- (i) Anticipating the entry into force of the Decree as of **January 1, 2007** with respect to the **sole TFR accruing from January 1, 2007 on;**
- (ii) Establishing a State fund to which undertakings shall transfer the TFR of those employees who choose to leave the TFR with their employer;
- (iii) Reviewing the pension fund tax regime with the purpose to render it consistent with that currently applied by other EU Countries;

- (iv) Finalizing the discussion with banking institution in order to minimize the financial impact on enterprises that, transferring the TFR to complementary pension schemes, cannot any longer dispose of their most consistent funding vehicle.

This is a summary of the main rules concerning the transfer of the TFR to the complementary pension schemes set forth in the Decree. Such rules should enter into force starting from January 1, 2007 provided that the Bill 2007 Financial Law is approved without further amendments.

1. HOW THE COMPLEMENTARY PENSION SCHEMES ARE FINANCED?

From January 2007 the complementary pension schemes will be financed not only by contributions of the employee and employer's contributions¹, but also by transfer of the TFR.

The employer will be required to transfer to the complementary pension schemes the TFR accruing from January 1, 2007.

The TFR accrued up to December 31, 2006 will continue to be with the employer and will be paid to the employee at the termination of the employment.

2. HOW THE TFR IS TRANSFERRED TO THE COMPLEMENTARY PENSION SCHEMES?

2.1 Employees who have started to work after April 30, 1993 shall decide whether they want to transfer the TFR to complementary pension schemes, or leave it with the employer.

The decision must be communicated to the employer **by June 30, 2007**, or **within six months from the hiring date**, for those employees hired on or after January 1, 2007.

Decision to keep the TFR with the employer can be changed by the employee at any time.

2.2 Employees who have started to work by April 30, 1993 shall communicate to their employer **by June 30, 2007**:

- (i) As to those who are not already registered with any pension fund, if they intend to leave the TFR with the employer or transfer it to a complementary pension scheme;
- (ii) As to those who are registered with a pension fund, if they intend to continue to contribute to the fund with the same portion of the TFR and leaving the residual part with the employer, or if they wish to contribute also with the residual part of the TFR.

3. WHICH IS THE MECHANISM FOR THE TRANSFER OF THE TFR?

If the employee does not express any willing as to the destination of the TFR within the deadline mentioned under 2.1. and 2.2 above, the employer shall transfer it to the collective pension fund set out by the applicable national collective agreement or by the company's collective agreement, starting from the month following the six-months period referred above. This is the so called mechanism of "**Silent-Consent**".

If there are more collective pension funds, the employer shall transfer the TFR to the pension fund elected by an agreement entered into by the employer and the trade unions or the

¹ Usually the employee/employer's contributions are calculated as a percentage of the salary taken into account for the calculation of the TFR.



employee. If no agreement is entered into by the parties, the employer shall transfer the TFR to the pension fund to which most of the employees are registered with. In the absence of any collective pension fund, the employer shall transfer the TFR to a public supplementary pension scheme set up by INPS, the Italian Social Security Authority (the so-called “**Public Pension Fund**”).

4. WHAT HAPPENS IF THE EMPLOYEE DECIDES TO LEAVE THE TFR WITH THE EMPLOYER?

4.1 Undertakings employing at least 50 employees

If the employee decides to leave the TFR with the employer, the latter shall transfer on a monthly basis the TFR quotas accruing from January 1, 2007 to a special Fund that will be managed by INPS on behalf of the Italian State (the “**State Fund**”)².

The transfer to the State Fund is not detrimental to the employee: at the termination of the employment relationship the TFR will be paid by the employer (and not by the State Fund).

4.2 Undertakings employing less than 50 employees

The employer will continue to accrue and manage the whole TFR up to the termination of the employment relationship: no transfer to the State Fund shall be made.

5. WHICH ARE THE BENEFITS TO MINIMIZE THE FINANCIAL IMPACT OF THE ENTERPRISE TRANSFERRING THE TFR?

The Bill 2007 Financial Law provides some benefits for the undertakings transferring the TFR to complementary pension schemes or to the State Fund, among which:

- (i) The deductibility from the corporate income of an amount equal to 4% (for undertakings employing at least 50 employees) or 6% (for undertakings employing less than 50 employees) of the TFR transferred to complementary pension schemes or to the State Fund;
- (ii) The exemption from the payment of the contribution for 0.20% of the TFR to be paid to the public fund as to the portion of the TFR transferred to complementary pension schemes or to the State Fund;
- (iii) Starting from January 1, 2008, the gradual reduction of the social security contributions due by the employers as to the portion of the TFR transferred to complementary pension schemes or to the State Fund.

6. WHICH ARE THE EMPLOYERS’ OBLIGATIONS?

By **December 31, 2006** (or contextually to the hiring date for those employees hired afterwards) the employer shall send to its employees a written communication by which it:

- (i) Invites the employees to notify in writing whether they intend to transfer the TFR to complementary pension schemes or leave it with the employer;
- (ii) Informs the employees that in the absence of any communication thereof, the TFR shall be transferred to a pension fund through the mechanism of Silent-Consent.

² The State Fund is a fund different from the Public Pension Fund mentioned under para 3:

- The State Fund will receive the TFR of those employees who expressly have chosen to leave the TFR with their employer, if the employer employs at least 50 employees;
- The Public Pension Fund will receive the TFR of those employees who did not express any willing as to the destination of the TFR, independently from the number of employees employed by the undertaking.

Furthermore, to those employees who did not express any willing as to the destination of the TFR the employer shall communicate in writing which is the pension fund to which the TFR will be transferred through the Silent-Consent mechanism. This communication is to be given by **May 30, 2007** for those employee already on the payroll, and within **five months from the hiring date** for those employees hired afterwards.

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