

Published on 30 May 2022



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Optional profit-sharing scheme: The late filing of the agreement results in the loss of the right to social security exemptions

In a decision issued on May 12, 2022, the *Cour de Cassation* (French Supreme Court) recalled that the filing by the employer of the optional profit-sharing agreement after the 15-day period following its conclusion results in the loss of the right to social security exemptions for the first financial year in which the agreement becomes effective.

When a company sets up an optional profit-sharing scheme for its employees, French legislation imposes several conditions that must be met in order for the amounts paid to employees under the profit-sharing agreement to benefit from tax and social security exemptions.

First, the profit-sharing agreement must be concluded before the first day of the second half of the calculation period following the effective date of the agreement^[1]. For example, for a company with a financial year that corresponds to the calendar year, if it is decided that the profit-sharing agreement will take effect on January 1 of Year Y, the agreement must be concluded by June 30 of Year Y at the latest.

Secondly – and this is what the *Cour de Cassation* recalled in its decision of May 12, 2022^[2], the profit-sharing agreement must be filed with the labor authorities within 15 days from the deadline for the conclusion of such agreement^[3]. A company which must conclude a profit-sharing agreement before June 30 of Year Y has therefore until July 15 of Year Y to file it.

Failure to comply with this filing formality has serious consequences for the company.

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Indeed, in the event of an audit by URSSAF^[4], the latter may notify the company of an adjustment of the amounts paid to employees under the profit-sharing agreement.

The filing of the agreement after the deadline, even if such filing takes place during the financial year in which the agreement is to become effective, results in loss of the social security exemptions for that year.

Although the ruling of the *Cour de Cassation* only concerned the filing of an optional profit-sharing agreement concluded at the level of the company, this requirement to respect the deadlines should apply to unilateral decisions of the employer to set up an optional profit-sharing scheme as well as to agreements or unilateral decisions to adhere to industry-wide optional profit-sharing agreements.

[1] Article L. 3314-4 of the French Labor Code

[2] 2nd Civil Chamber of the *Cour de Cassation*, May 12, 2022, No. 20-22.367

[3] Article D. 3313-1 of the French Labor Code

[4] URSSAF (*Unions de Recouvrement des Cotisations de Sécurité Sociale et d'Allocations Familiales*) is the body responsible for collecting social-related contributions

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