STUDIO PISCIOTTA
COMMERCIALISTA | STUDIO LEGALE, SOCIETARIO E DEL LAVORO

To the clients:

Subject: Monthly advanced payment of Severance Indemnity (TFR) in the pay slip is unlawful.

Following the request for an opinion by the Inspectorate of the Milan metropolitan area, the National Labour Inspectorate, in its note of 3 April 2025 (Protocol. Nr. 616) expressed its opinion on the legitimacy of the common practice of monthly advance payment of TFR in the pay slip.

Two are particularly the questions asked to the National Labour Inspectorate.

The first question asks whether the advance payment of TFR, made after the end of the experimental regime identified by Law no. 190/2014 - which was limited to pay periods starting from 1 March 2015 to 30 June 2018 - is allowed only in the cases expressly provided for by Article 2120 of the Italian Civil Code and, consequently, whether an advance payment outside the hypotheses contemplated by the law is to be considered unlawful.

The second question asks what are, from an inspection point of view, the consequences arising from the disallowance of amounts paid as TFR's accrued sums.

In replying, the Inspectorate recalls that the TFR represents a **sum of money that is monthly accumulated by the employer**, on behalf of the employee, to ensure economic support at the end of the employment relationship.

It is governed by Article 2120 of the Civil Code, which, in addition to determining the calculation criteria, establishes in the following paragraphs the requirements and purposes under which the employee may request an advance on the amount accrued as TFR.

More specifically, the employee, with a seniority of at least eight years, may request from the employer an advance payment equal to 70% of the TFR accrued up to that moment, if justified by the need to face to:

- **medical expenses** for extraordinary operations recognised by competent public structures;
- the purchase of the **first home** for the employee and the employee's children;
- expenses **during maternity leave;**
- expenses **during training** or **continuous training** leave.

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The employer is obliged to satisfy annually at least 10% of the requests for advance payment of the TFR submitted by entitled employees - i.e. employees with at least 8 years of seniority and for the above-mentioned reasons – and, in any case, the employer must satisfy the requests of at least 4% of the total number of employees.

The Inspectorate answers the first question, because of what expressed in the last paragraph of Civil's Code Article 2120, affirming that the introduction of more favourable conditions by collective or individual agreements relating to the acceptance of requests for advance payment of the amount saved and accrued at the time of the agreement cannot **be rendered into a mere automatic transfer of the TFR's monthly accrued sum to the pay slip.**

The payment in the pay slip of TFR's monthly accrued sum is a true and proper **supplement pay** subject to contribution and tax obligations (Civil Cassation 4670/2021).

Moreover, it must be emphasised that this method of payment of TFR ends up debasing the institution ratio, that is to ensure the employee an economic support at the end of the employment relationship.

Regarding the second question, the Inspectorate states that if, following an inspection, the undue monthly payment of the TFR's accrued sum to the employee is ascertained, the inspection staff must order the employer to set aside **the TFR amounts unlawfully advanced** through the adoption of an immediately enforceable provision (Article 14 of Legislative Decree No. 124/2004).

Failure to comply with the provision an administrative sanction ranging from € 500,00 to € 3.000,00 will be applied.

This means, there is a risk that the monthly payment of TFR is considered as wage, on which social security contributions are due, and that the employee, in addition to these sums already paid to him monthly and which nature is requalified, is entitled to the TFR amount.

Considering the above, and the opinion expressed by the National Labour Inspectorate, it certainly appears inadvisable to pay monthly the TFR in a pay slip.

To avoid at the end of the employment relationship to pay in a single solution the entire amount of the accrued TFR, perhaps for long-term employment relationships that normally generate substantial sums, the employer could urge employees to join complementary pension funds to which the monthly accrued TFR should be paid or could use other financial instruments to set aside such sums.

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