



Introduction

This issue of PECOMA Pension News provides a summary of the recent circular 2008/01 issued by the Inspectorate General for Social Security (IGSS) as well as an update on a number of ongoing issues covered in our Pension News I – 2007.

Circular 2008/01

The IGSS issued circular 2008/01 on 10 June 2008 which covers a small, but important change to the administration of leavers (point 2. below) as well as a number of "house-keeping" issues:

1. The IGSS notes that a number of pension plans have either not been registered or the file is incomplete. It now proposes to issue reminders to employers and plan managers, giving them three months to provide the information requested. If the information requested is not provided to the IGSS within this timeframe, it will inform the tax authorities about the non-respect of proper formalities and refuse to sign the deductibility certificates. As a result, the pension plan expense will then not be deductible for the employer.

In particular it should be noted that the IGSS insists that the employee representation provides its consultative opinion on each pension plan provided by the employer, even if such a plan only covers, for example, senior management.

2. For the purpose of determining the de minimis limits for payout upon termination or retirement under article 13 (1) c) and d) of the law of 8 June 1999 on occupational pensions the IGSS has confirmed that it considers each of the benefits provided in a pension plan separately. This removes the need to obtain prior approval for payout of small amounts and simplifies plan administration. However, the application of the dependency contributions still has to be confirmed with the IGSS.
2. Finally the IGSS has confirmed that the plan codes required to provide the provisional regulatory reports (see PECOMA Pension News I - 2007) will now be issued, so that the parameters can be confirmed and reports be prepared and submitted to the IGSS without undue delay.

"Statut unique"

The law of 13 May 2008 on the statut unique establishes the equal treatment of blue-collar workers ("ouvrier") and white-collar workers ("employé privé") in the areas of employment law and social security in Luxembourg. The law enters into force on 1 January 2009 and harmonises the treatment of these two categories of workers.

The legislation sets out two changes to the law on occupational pensions, which will make the management of pension schemes more flexible.

These changes are as follows:

1. No automatic extension of membership of pension plans as a result of the new law, where pension plans only cover a part of the workforce.
2. Possibility to determine membership of pension plans by date of entry into service when existing pension plans are revised.

The new law does not change the law on occupational pensions, which will continue to be based on the premise that occupational pension schemes must be collective plans and enrolment is mandatory for all employees who fulfil the membership conditions and all employees in the same category must have the same plan.

Point 1. (no automatic extension of membership of pension plans as a result of the law) preserves the prerogative of the employer to define benefits and eligible employees on an objective basis.

However, as the distinction between "ouvrier" and "employé" no longer exists, we suggest that membership rules should be reviewed for all plans in those companies, where both blue-collar workers and white-collar workers are employed and are currently subject to different rules.

Point 2. means that there will be significantly more flexibility in situations where pension plans are revised. If an existing pension plan is amended, the employer now has the choice to keep existing employees in the old plan or, subject to the protection of entitlements, to transfer these employees to the new plan.

This change will enable employers to close existing plans to new entrants and establish a new plan for new employees. Furthermore, the employer has the discretion to transfer existing employees individually to the new plan (or not) and employees may be given the opportunity to indicate their preference in this process, provided they are adequately informed about the implications on their pensions. We also note that the IGSS has indicated that it is prepared to accept the application of this principle before 2009.

We also note that the rule prescribing a single pension plan covering all employees in the same category will continue to apply in cases where a pension plan is newly introduced in a company.

Taxation of internally funded pension plans

We understand that the position of the authorities has now been further clarified to the disadvantage of internally funded plans (see PECOMA Pension News I - 2007). A gradual regulation is expected, which is likely to confirm that the interest allocation in respect of pension rights falling under the tax regime of the occupational pension law will now be subject to the flat rate tax of 20% and the regulatory levy of 0,9%.

The effect of this change would be to double the tax cost of internally funded plans to the employer over a typical career, when compared to externally funded plans.



We re-iterate our comment in that employers may now wish to review their pension plan in the light of this change, taking into account the other key factors affecting the cost of the plan:

- ❑ the economic value of the cash flow advantage from internal funding
- ❑ the additional cost of internal funding: tax and regulatory levy on interest allocations for taxed provisions, insolvency cover on total provisions, additional reporting requirements (IAS, PSV), when compared to the
- ❑ availability of free assets to switch to external funding
- ❑ the characteristics of external funding vehicles (group assurance contracts or pension fund) in respect of initial funding, ongoing costs and commitments
- ❑ the requirement to introduce changes in the membership rules and in the type and scope of benefits arising from the change to a single employment statute and the overall development of the business.

We have considerable experience in the design of external pension plans as well as the management of the transition process from internal to external pension plans and remain at your disposal for an initial discussion in this area.

Anti-discrimination rules

The laws of 21 December 2007 and 13 May 2008 on equal treatment of men and women have clarified some areas of anti-discrimination legislation, which had given rise to debate and some legal uncertainty.

This uncertainty arose from the fact that the initial transposition of EU directives in this field had not included certain options available to member states, resulting in total prohibition of the factors age and sex in insurance and pensions. Yet in both fields these factors have a major impact in the determination of premiums and the calculation of benefits (eg. different life expectations for men and women, pension plans being based on a certain age of retirement).

Differentiation in the treatment of men and women are now admissible in the field of insurance, where sex is an objective determinant of premiums or benefits and this impact is supported by actuarial or statistical information, which is in turn verified by the insurance regulator, the Commissariat aux Assurances.

Differentiation on the basis of age is permitted in the field of professional social security as far as the determination of entry and retirement ages are concerned and even for different categories of employees, if this discrimination is reasonable and objectively justified. A similar exemption to the general anti-discrimination rule applies to insurance contracts.

The most important implication of the above is that it remains possible to fix retirement dates for the purpose of determining benefits in defined benefit plans (although we note that the European Court of Justice is currently reviewing cases in this context). However, differential entry dates or contributions rates varying by age may have to be examined more closely, to ensure that they are indeed reasonable and objectively justified. It may generally be preferable to tie these variables to length of service rather than age, but this will be a matter of individual choice by each employer.

News in brief

Compliance of BVV pension plans

PECOMA International S.A. has been advising clients on the formalities required to ensure compliance of pension promises funded with the BVV, further to the transposition of the IORP-Directive in Germany and in Luxembourg. Such plans now require a separate set of plan rules to complement the BVV plan documentation and must to registered with the IGSS.

Recent publications

PECOMA International S.A. has taken part in the publication of a brochure on pension funds issued by Luxembourg for Finance. A soft copy of this document will shortly be available on our website.

Gerd Gebhard has recently made a presentation on the international aspects of Luxembourg occupational pensions plans as part of a seminar held by the British Chamber of Commerce. This presentation is available on the web site www.bcc.lu.

PECOMA International S.A. is an employee benefits and actuarial consultancy advising its customers in the areas of risk benefits and retirement planning. We also assist our customers in finding the appropriate funding vehicle for their benefits and retirement plans. We deal with all aspects in this area, be it financial or actuarial, tax, accounting or labour law issues.

For further information, please do not hesitate to contact us.

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