New law on maximum accrual rates, premium percentages and maximising of pensionable income

On 1 January 2015 new fiscal rules will become applicable for all Dutch pension plans. As of that date the maximum accrual percentage per year in a final pay plan (*eindloonregeling*) will be 1.675% (currently 1.9%) and in an average pay plan (*middelloonregeling*) 1.875% (currently 2.15%).

The fiscally allowed maximum premium percentages in a defined contribution plan (*beschikbare premieregeling*) will be lowered as such that in 40 years an old age pension of up to 75% of the average pay can be accrued. In addition a cap of EUR 100,000 will be introduced for the maximum pensionable income to be taken into account as pension accrual base (*pensioengevend salaris*). This implies that most pension plans in the Netherlands will have to be amended in order to remain in compliance with the fiscal requirements.

If a pension plan exceeds the maximum accrual rates and/or the maximum pensionable income of EUR 100,000, as of 1 January 2015 that will imply that the pension plan shall no longer be tax compliant. This does, however, not automatically result in a right for the employer to unilaterally amend the pension plan in order to comply with the revised tax rules. Amending the pension plan will need to happen in accordance with the relevant rules, which may be different for each plan and are based on the applicable plan rules as well as possible agreed options for the amendment of benefits as laid down in the (collective) labour agreement.

As a result of applicable rules for amending the pension plan, there may be an obligation to compensate the employees for the deterioration of the pension plan. One of the options for compensation of the loss of accruing pension benefits over the pensionable income exceeding EUR 100,000 can be to offer employees the possibility of additional net accrual over the excess income. The premiums for this additional net accrual, which will be introduced as of 1 January 2015 (details currently unknown), will not be tax-deductible and, therefore, this manner of compensation will be relatively expensive both for the employer and the employees. Given the fact that this net accrual will have to be in the form of a defined contribution (DC) provision administrated separately from the collective basic pension plan, the chance that this arrangement will result in full compensation is limited if, for example, the collective basis pension plan is an average pay plan. Note though that with regard to the net accrual, no taxes are due when net pension benefits are paid out.

The exact conditions for the administration of the net accrual arrangement, also by pension funds, have not yet been published.

Key issue

- Most pension plans in the Netherlands will have to be amended to remain compliant with the fiscal requirements per 1 January 2015.

Clifford Chance's Amsterdam employment, pensions and benefits team is more than happy to assist you both with the assessment of the impact of the above changes to your pension plan and existing commitments, as with any possible subsequent actions.

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