

## Reform of the Supplementary Pension Scheme

An act governing supplementary pension schemes in Luxembourg was adopted for the first time on 8 June 1999. A reform had been expected for several years. Thus, after lengthy discussions in parliament, a new act was passed last August 1<sup>st</sup>. It will enter into force on 1 January 2019.

The main points to cite among the changes brought about by the new act are as follows:

- **Widening of the scope of the act**

The Act of 8 June 1999 provided only a framework under which employers could set up a supplementary pension scheme for their employees. The new act extends the option to self-employed workers and the professions.

The aim is therefore to enable the professions and self-employed workers to build up savings for their retirement under a legal and fiscal framework similar to the one currently in force for salaried employees. To that end, self-employed workers and the professions could contribute to registered plans managed by external managers. As is the case for company supplementary pension schemes, registered plans can offer coverage for retirement, death, disability or survivorship.

In concrete terms this means that a self-employed worker could determine freely the annual amount that he wishes to pay into his pension plan. The only restriction is that the maximum tax-deductible amount may not exceed 20% of the net earned income for the retirement segment.

The contributions to the pension plan will moreover be subject to a 20% flat rate tax (identical to that applicable to salaried employees) and a remunerative tax of 0.9% which will not be tax deductible.

- **Reduction of the vesting period**

This change arises out of the transposition of the European “Mobility” Directive which is intended to remove legal constraints for the acquisition and preservation of supplementary pension rights, which may hinder the free movement of employed workers in the European Union.

The vesting period corresponds to the required period of affiliation with one’s employer before the definitive acquisition of rights. In Luxembourg, it was until then permitted to require 10 years of service for employed workers before they could be eligible for vested rights, i.e. rights to benefits in case of retirement, disability, death, or survivorship. Beyond that period, the amount paid by the

employer into the company supplementary pension plan shall be definitely acquired by the employed workers.

With the Act of 1 August 2018, the vesting period for a supplementary pension may not exceed **3 years**.

Whereas this act will enter into force on 1 January 2019, the provisions concerning the acquisition of rights are applicable as of 21 August 2018, the date on which this act was published.

**In more concrete terms:**

- 1) The maximum vesting period of 3 years is immediately applicable to all employed workers hired as of 21 May 2018.
- 2) For employed workers hired before this date, the maximum vesting period remains fixed at 10 years but cannot be extended beyond 20 May 2021.

**Example:** An employed worker takes up his duties on 6 November 2016 and is entitled to a supplementary pension plan with his employer with a vesting period of 5 years. In principle, according to the old legislation, he would have had to wait until 6 November 2021 to comply with the vesting period fixed by his employer. With the new act, this period is reached as of 20 May 2021.

- **What about vested rights if the affiliate leaves before reaching retirement age?**

The act of 1999 only indicated that the maintenance of vested rights had to be guaranteed. In practice, employers were therefore in no way required to maintain the nature of the benefits initially promised, only to transfer the current value of the rights acquired by their employees.

The reform of 2018 has clarified the rights of the affiliate in the event of early departure.

**If the vested rights are maintained:** The new act clearly indicates that if the affiliate left before the age of retirement, the maintenance of vested rights had to be guaranteed, even in the event of dismissal for gross negligence. Accordingly, companies will henceforth be required to keep their promises until retirement and will be able to free themselves from them only if they finance the cost of their transfer to another scheme that guarantees the same benefits.

In this respect, the act spells out rules aimed to determine the value of the vested rights when an affiliate opts to maintain them in the scheme of his former employer until the day he retires. Furthermore, the act also indicates that at the time that the affiliate leaves the company, he must be able to opt for the reimbursement of all the reserves built up in case of death before retirement age, while accepting a possible recalculation of the value of the acquired benefits.

**In the event of transfer of the vested rights:** The new development resides in the possibility to transfer vested rights to another company scheme by means of an agreement by and between the parties. Conversely, the act of 1 August 2018 does away with the option of transferring vested rights to an insurance company.

The employees shall nonetheless always have the option of transferring their rights:

- to another supplementary pension scheme with a new employer or another group of companies;
- to a registered supplementary pension scheme, as provided by the new act.

**In the event of redemption of acquired rights:** in this eventuality, the affiliate receives the current value of the vested rights in the form of capital. Upon redemption of the acquired rights, the rights and obligations of the supplementary pension scheme with regard to the affiliate cease.

As of 2019, the employed worker will be able to redeem vested rights only in two eventualities:

- When the reserves acquired by the affiliate do not exceed 3 times the minimum social wage for an unskilled worker (currently €6,145.62);
- When the worker leaves to carry out a new activity for which he is no longer subject to the Luxembourgish health insurance. Such is the case when he carries out an activity abroad.

- **Strengthening of the right of information of the affiliates**

The employer's obligation to inform has been expanded and strengthened by the new provisions. In fact, the act is henceforth more precise as to the list of data that have to be disclosed in writing at least once a year to the affiliates. At the request of an affiliate, the company is also required to disclose in writing any consequences cessation of employment would have on his supplementary pension rights.

In addition, the law requires the employer to inform the affiliate, that the vested interests are maintained in the event of departure as regards the choices offered concerned the intended use of the reserves acquired and the conditions for the treatment of said reserves. This information must be provided within 30 days following the affiliate's departure.

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