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### The situation regarding recovery plans

The final week of May saw the publication of the amendments to the ministerial regulation governing the extension of the deadline for the short-term recovery plan, as outlined in the Social Consultation of 24 March 2009. The amendments broadly amount to the following:

- The measures that are included within the recovery plan in order to provide for a situation in which recovery is probably not possible within the specified deadline do not need to take the form of fixed measures. They must however represent a realistic possibility of recovery.
- The first reduction must be carried out no later than 1 April 2012, unless the consultation that takes place in July 2010 (based upon the funding level at the end of 2010, the recommendations of the Parameters Committee and the outcomes of the FTK evaluation and the economic conditions at that time) provides sufficient reasons for measures to be taken at an earlier stage.
- The DNB may also adopt a tailor-made approach and grant a further extension in response to specific conditions other than the ones that give rise to the current amendment.

Meanwhile, DNB has stated in its quarterly report that, in the recovery plans that have been put together, around twenty pension funds have found it necessary to cut benefits. Furthermore, and as reported by Minister Donner to the Lower House of the Dutch Parliament on 23 June 2009, there are 60 funds into which employers are making supplementary payments. Overall, around 342 recovery plans have been submitted, 300 of which involve some sort of funding deficit.

### Dutch Actuarial Association publishes GBM/V 2002-2007

In 2007, the Dutch Actuarial Association (AG) published its Forecast Table 2005-2050. This was the first generation table issued by the AG that attempted to make a prediction as to the likelihood of death up to and including 2053. Since that time, interim updates of the standard GBM/V tables have been published on an annual basis. These are the old-fashioned tables that only

take account of the actual number of deaths that took place during the past five years. Last year, it transpired that the actual improvement in life expectancy had considerably exceeded the predictions contained in the Forecast Table 2005-2050. The AG did not however attach any conclusions to this at that time. Recently, the interim GBM/V table for 2002-2007 was published, based on observations from 2002 to 2007 inclusive, from which it appears that the life expectancy of both men and women has increased even further. The life expectancy of men has also risen more rapidly than that of women, with the result being that the life expectancies for men and women are now converging. In comparison to last year, men are living around 0.4 of a year longer (from birth), whilst women are only living 0.3 years longer.

Furthermore, Statistics Netherlands (CBS) recently carried out an update of the prediction of life expectancy, based on data from two years after the data used to produce the previous prediction. This update reveals that, in 2050, men are predicted to live 1.5 years longer than was estimated two years ago. This improvement in life expectancy has therefore not only continued, but has developed at a more rapid pace. In view of these developments, the AG decided to revise the Prediction Table once again this year.

Watson Wyatt has decided to proceed with preparing the AG prediction, using the methodology that was established during the compilation of the current Forecast Table 2005-2050. This will enable us to inform you at an early stage of the impact that this is predicted to have on the technical provisions of your fund.

### Part-time unemployment and the accrual of pension entitlement

With effect from 1 April 2009, employers have had access to a facility that enables them to retain specialist employees they would have had to have made redundant as a result of the current economic crisis. This is achieved by applying for part-time unemployment for the affected employees. This scheme is intended for companies which, despite a current shortage in orders and turnover, are sufficiently healthy to survive the economic crisis. Whilst the part-time unemployment, which lasts for a maximum period of fifteen months, remains in force, the employee continues to be employed by the employer and is required to work at least 50% of his/her working hours. For the remaining 50% of his/her hours, the employee receives unemployment benefit, as long as s/he fulfils the requirements of the Unemployment Act [*Werkeloosheidswet*].

Part-time unemployment does, however, have certain consequences for the pension accrual of the employee concerned. Unless the pension scheme contains a facility that enables full pension accrual to continue, the employee will not accrue pension entitlement in relation to the hours not worked and for which s/he receives part-time unemployment benefit. The period of part-time

unemployment will also have an effect on the amount of time during which the employee is entitled to unemployment benefit on a full-time basis. This can give rise to a situation in which the employee ends up claiming social assistance benefit sooner in the event that s/he is ultimately made redundant once the period of part-time unemployment has ended. In order to prevent this from occurring, the trade unions have demanded that pension accrual be continued throughout the period of part-time unemployment. The Minister of Social Affairs and Employment, Mr Donner, was also asked whether or not the gap in pension accrual could be closed by having recourse to the Supplementary Pension Insurance contributions. According to Minister Donner, this is currently under discussion at the Supplementary Pension Insurance Foundation.

The Cabinet has allocated the sum of 375 million euro to this scheme and the large number of applications means that that amount has already been used up. For that reason, Minister Donner announced last week that it was no longer possible to make use of the scheme. In response to that announcement, the Lower House of the Dutch Parliament asked Minister Donner to take rapid steps to introduce a continuation of the part-time unemployment scheme. Under such a scheme, the terms and conditions for granting part-time unemployment could then be made more stringent. Minister Donner responded positively to this and it is predicted that the scheme will be continued with retroactive effect from 23 June 2009 until 1 January 2010, as long as funding continues to be available.

## **Results of self-assessment by pension funds**

The Netherlands Authority for the Financial Markets (AFM) is the supervisory authority responsible for the supervision of market conduct. Amongst other things, this means that the AFM must carry out an assessment of the manner in which the information that must be provided in accordance with the Pensions Act is actually being issued. Within this framework, the AFM requires pension funds to carry out an annual self-assessment.

This self-assessment provides the AFM with information as to the extent to which the pension fund in question satisfies the standards set out under the relevant (pensions) legislation and regulations. It also increases the extent to which the AFM is able to organise its supervisory activities on a risk-oriented basis. For the time being the self-assessment activity is only carried out by pension funds. Based on the data provided, pension funds receive an overall score for information provision, which is expressed in terms of a percentage from 0% to 100%. In the future, a self-assessment tool is also going to be made available for pension insurers.

The self-assessment that was introduced in 2008 has an average weighted score of 78% for company and professional pension schemes and 80% for sector-based pension schemes. Although these scores were considerably higher than those obtained during the self-assessment in 2007 (in which the average score was 65%), the AFM still regards 100% to be the target. The fact that the average score was equivalent to 79%

therefore means that there is still considerable room for improvement.

During the coming year, the AFM is going to focus specifically on the prompt provision of the Uniform Pensions Summary [*Uniform Pensioenoverzicht – UPO*]. The AFM has indicated, in the form of a policy regulation, that a Uniform Pension Summary is deemed to have been provided in good time if it is received by the pension scheme member no later than 30 September in any given year. In the near future, the AFM will publish recommendations based on an investigation into the UPO.

## **Study into the possible ways of increasing pensionable age for state old-age pension scheme**

The Cabinet has approved the contents of a Memorandum that explores the possibility of increasing the age at which retirees receive the General Old-Age Pension [*AOW*].

According to the Memorandum, the reason for exploring a possible increase in retirement age lies in the increasing pressure being placed on the welfare state as a result of a decline in the number of younger people and the ageing of the population as a whole. The fact that there are now fewer younger people and more older people than before means that for every person receiving a general old-age pension, there are now two people in employment, as opposed to the previous six. As a result of the current economic climate, it has become necessary to examine the sustainability of collective schemes, such as the General Old-Age Pension [*AOW*].

The Memorandum includes a number of variations involving the raising of the age at which individuals are entitled to receive the General Old-Age Pension. The Memorandum specifically examines the possibility of linking pensionable age to an individual's employment history or life expectancy (or a combination of the two). The Memorandum also examines the way in which an increase in the pensionable age can be brought about and the situation that applies to those carrying out heavy work and will soon be entitled to receive a pension.

With the consent of the Cabinet, the Memorandum was forwarded to the Lower House of Parliament. No decision will be taken with regard to any increase before 1 October 2009. In the meantime, the Social and Economic Council will have time to issue its recommendations with regard to an alternative.

## **Emigration levy on pensions and annuity schemes contrary to terms of dual taxation agreements**

In the view of the Netherlands Supreme Court [*Hoge Raad*], the Netherlands Tax and Customs Administration is no longer entitled to impose a conservative levy upon pension and annuity schemes (hereinafter referred to as pensions) whenever the holder emigrates abroad. The purpose of the conservative levy was to secure the entitlement of the Dutch state to levy taxes on those schemes at the point at which the holder emigrates, in the

event that any improper transactions are carried out in relation to those pensions (such as redemption).

Judicial proceedings have been initiated since this emigration levy was first introduced in 2001. The issue relates to the question as to whether the conservative levy is or is not in contravention of the taxation agreements that the Netherlands has concluded with various foreign countries. In the case of many of these taxation agreements, it is stipulated that the Netherlands does not enjoy the right to levy taxes on pension income in the event that the recipient is resident in another signatory country. In the case of agreements that have been established for longer, this even applies in the event that pensions are redeemed. As far as the Netherlands Tax and Customs Administration is concerned, the conservative levy therefore forms an ideal means of securing its claim. It is, however, alleged that the levy relates to a period during which the person concerned was still resident in the Netherlands. In the opinion of the State Secretary for Finance this therefore implies that the individual is not able to have recourse to the rights available under the dual taxation agreement to residents of the country in which they have taken up residence.

On 19 June 2009, the Netherlands Supreme Court issued a number of judgments in this matter.

#### **Judgments by the Netherlands Supreme Court**

The Netherlands Supreme Court found that a levy that is applied in the event of emigration may well be in contravention of the good faith that must be observed when interpreting and applying the dual taxation agreement that exists between the countries involved if, by applying such a levy, tax is imposed on a benefit which, in view of its very nature, may or may not be subject to a levy by the country in which the individual is taking up residence.

In view of the Netherlands Supreme Court, it is clear that the actual point at which that benefit is received (if it occurs) will only arise during the period in which the individual is resident in the other signatory state and that under the majority of dual taxation agreements, the actual enjoyment of such benefit is then subject to taxation by the other signatory state. The Supreme Court is therefore of the opinion that, by applying the conservative levy, the Netherlands is awarding itself a right of taxation that actually accrues to the country in which the individual now lives. This is therefore contrary to the terms of the dual taxation agreement. In its interpretation of taxation agreements, the Netherlands Tax and Customs Administration is therefore acting in contravention of the good faith that is inherent to dual taxation agreements and is therefore contravening the Vienna Convention on Treaties.

These judgments by the Netherlands Supreme Court therefore mean that directors/ major shareholders who are not subject to the Pensions Act can redeem their pension without being subject to taxation in the Netherlands. In that case, however, it is of course important that, in the case of redemption, the article of the convention refers to the country of residence. As far as older taxation agreements are concerned (such as the one with France), the latter is, in fact, the case.

In the case of 'normal' employees, however, these judgments will have no effect, due to the fact that the Pensions Act prevents the redemption of pensions. The operators of pension schemes in the Netherlands will therefore not lend any assistance to any attempt to redeem pensions.

#### **Action and response by the State Secretary for Finance**

In response to the judgments by the Supreme Court, the State Secretary for Finance issued an announcement before the summer recess of Parliament, stating that a draft law would be submitted, the purpose of which would be to prevent the redemption of (or any other 'prohibited actions' relating to) pension entitlements accrued in the Netherlands with the benefit of tax concessions, without the Netherlands having been able to seek the return of the tax benefit enjoyed. The State Secretary is of the opinion that the judgments of the Netherlands Supreme Court provide sufficient scope for the law to be amended in such a manner that conservative levies may still be imposed on taxpayers departing to live abroad who have received tax concessions in the Netherlands for the accrual of pension entitlement. This Act will be introduced with retroactive effect from 19 June 2009 onwards.

#### **Further information**

**For more information on the matters covered in this issue of the Watson Wyatt Update, please contact Wichert Hoekert (The situation regarding recovery plans), Richard Meijer (Dutch Actuarial Association publishes GBM/V 2002-2007), Pauline Bakker (Part-time unemployment and the accrual of pension entitlement), Ingeborg Agema (Results of self-assessment by pension funds, Study into the possible ways of increasing pensionable age for state old-age pension scheme) or Jetty Lahoye (Emigration levy on pensions and annuity schemes contrary to terms of dual taxation agreements).**