



Newsflash

Belgian 5.55% social security charges on occupational pensions violate EU law

Current rules and administrative practice in a nutshell

Upon the lump sum pay-out of a Belgian occupational pension, insurance companies are currently obliged to withhold, at source, the Belgian solidarity contribution (“SOL-contribution” of 2%) and health insurance contribution (“RIZIV/INAMI-contribution of 3.55%) from the pension benefit. The beneficiary can afterwards prove that he/she is subject to the social security system of another EEA country¹ and that Belgium is not financially responsible for his/her medical care costs. Subsequently, it is confirmed that the withheld amounts were not due and will be reimbursed by the competent authority (“Federale Pensioendienst” / “Service fédéral des Pensions”).

ECJ decision: only one legislation applicable

The European Court of Justice recently ruled that this automatic withholding, which is completely blind to the beneficiary’s social security position at pay-out, is contrary to EU law. It manifestly violates the basic principle of EU Regulation 883/2004 that a person can only be subject to one single social security legislation in the EEA. For an individual who has ceased all professional activities (regardless of whether he/she already

receives legal pension), the legislation in his/her country of residence will be applicable. If this is not Belgium, the latter cannot impose social security contributions on the occupational pension benefit, albeit temporarily and with a pending reimbursement.

An example:

Peter stops working as an employee in a Belgian company at the age of 60 and does not take on any other professional activity. As he resides with his family in Germany, he becomes subject to German social security legislation. Upon pay-out of his Belgian occupational pension, the Belgian insurance company will have to withhold the SOL and RIZIV/INAMI contributions at source, regardless of his affiliation to German social security. This is contrary to EU law, as it means that both the German and Belgian social security legislations are simultaneously applied to him. Only German legislation can be applied to him. The fact that the Belgian levy is only temporary and will be reimbursed does not alter this conclusion.

Laga's view

This EU case law clarifies that the withholding at source of the SOL and RIZIV/INAMI contributions on lump sum occupational pensions is not allowed if the beneficiary is subject to the social security legislation of another EEA country. The current system of automatic withholding and subsequent reimbursement will have to be adapted.

At this stage, it is not known how Belgian legislation will be amended. It seems plausible that, going forward, the beneficiary should be provided with the possibility to prove his/her affiliation to another EEA country's social security system at pay-out, in order to avoid undue withholding. In addition, it remains to be seen whether specific instructions will be provided for insurance companies to align administrative practice with this case law in the period before the relevant legislation is modified.

It should be noted that, in principle, this case law does not affect the situation of beneficiaries residing outside the EEA, to which the withholding at source can continue to apply. Finally, for occupational pensions paid in annuities (and not as a lump sum), a separate exemption regime from the SOL (if resident in another EEA country) and RIZIV/INAMI (if Belgium is not financially responsible for medical care) contributions is applied.

We will follow up closely and updates on any further legislative or administrative developments will be provided. Laga's social security team is readily available to provide more detailed information and answer any questions in this regard.

¹EEA (EU + Norway, Iceland, Lichtenstein) and Switzerland

Filip Van Overmeiren, Advocaat-Avocat, Tel: + 32 2 800 71 17, Email:
fvanovermeiren@laga.be



Laga

Berkenlaan 8B
1831 Diegem
Belgium

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