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General pension fund tax issues

The introduction of the general pension fund ("GPF") has led several pension funds and administrators (individually or jointly) to consider the creation of a GPF. Taxation also plays a role when examining the financial costs. Account must already be taken of this when establishing a GPF in order to make optimum use of the various tax incentives. In this fact sheet we briefly explain a number of tax issues.

VAT (turnover tax)

A GPF is regarded as a VAT-taxable person and will have to file VAT returns. Although VAT is often not included on the invoices from foreign service providers (e.g. an English custodian or asset manager), the GPF may have to pay VAT through its own Dutch VAT return (the VAT is then reverse charged to the GPF).

A GPF is generally not entitled, or only has a limited entitlement, to deduct VAT. This means that VAT is an expense item for the GPF. Exemption from VAT or increasing the deduction entitlement helps to reduce this expense item. Thus for example, the management of capital raised for the purposes of collective investment is VAT-exempt. A GPF must determine for each group plan whether the plan can be regarded as collective capital. This depends in particular on the pension plan to be administered. There is some degree of certainty that management services are in any event VAT-exempt if the capital is invested in investment funds. This also applies if the capital is pooled (in a mutual fund, for example) and then invested for joint account and risk. By using such exemptions, the VAT burden on the GPF can therefore be mitigated. It is essential, however, that this is assessed at the earliest opportunity.

The GPF may be able to deduct part of the VAT that it pays on the acquisition of goods and services. In general, the more that is invested outside the EU, the greater the deduction entitlement. This also reduces the GPF's VAT expense.

Payroll tax

Taxation also affects the pension accrual through the GPF: pension accrual is maximized by the 'Witteveen framework'. The pension accrual for average pay and final pay plans must comply with the percentages referred to in the Reduction of Pension Accrual Act (Wet verlaging pensioenopbouw). For defined contribution plans, the sliding scales have been adjusted.

In addition, the pensionable salary is subject to a maximum from January 1, 2015. For participants in the GPF, pension accrual can now only take place on a pensionable salary of no more than EUR 101,519 (2016). However, the GPF can create a separate pension provision for incomes above EUR 101,519 (2016), for example by offering a net pension.

Foreign taxation/withholding tax

When investing capital abroad an APF may have to pay foreign taxation/withholding taxes on dividends, interest and rental income. By virtue of Dutch bilateral treaties, the GPF may be able to reclaim some or all of the foreign withholding taxes. In practice, the custodian often assumes this task.

In addition, in some cases it is possible to file an additional claim under EU law. On the basis of the principle of equality, a Dutch GPF may be entitled to the same favorable treatment as pension funds within an EU Member State. Such an EU claim must be submitted on time or will otherwise not be accepted.

Corporate income tax

The Dutch Corporate Income Tax Act 1969 includes a tax exemption for pension funds. If a GPF meets certain conditions, it can also make use of this exemption. During the preparation of documentation (e.g. articles of association) it is important that account is taken of this exemption.

Group transfer payment

If existing pension funds and/or insurers set up a GPF and transfer the accrued pension rights/the accrued pension assets to the GPF, this can also have tax consequences.

Thus there is a risk that VAT is payable on the total value of the transferred portfolio, or that payroll tax and social security contributions and deemed interest (which can amount to as much as 72% of the pension obligations) must be paid. Corporate income tax, real estate transfer tax and gift tax must also be taken into account with a group transfer payment. In the case of withholding tax claims, the further settlement thereof should be examined. Therefore, it is important to anticipate tax consequences prior to the transfer payment, so that taxes can be avoided as much as possible.

Contact

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