KPMG Meijburg & Co Tax & Legal

Lump Sum Payment, Early Retirement Scheme and Leave Savings Scheme Bill

On January 12, 2021 the Lump Sum Payment, Early Retirement Scheme and Leave Savings Scheme Bill (*Wetsvoorstel bedrag ineens, RVU en verlofsparen*) was adopted by the Upper House of Parliament. This bill is part of the Pension Agreement. In this bill the government elaborates on three of the agreements made: more freedom of choice in the use of the pension (lump-sum payment), more options for early retirement (easing of the early retirement levy; *RVU-heffing*) and more scope to utilize the tax relief for saving leave for the purposes of early retirement (leave savings scheme).

Freedom of choice in the use of the pension

The bill offers participants in a pension plan the option to commute a maximum of 10% of their old age pension on the pension commencement date, or in the month of February following the year in which someone reaches the statutory retirement age. The option to use the right of partial commutation and the request to the pension administrator to do so should be made *before* the old age pension commences. This right of option cannot be restricted by, for example, the pension administrator, by employers' and employees' organizations or by representative bodies. Nor has a mandatory spending target been proposed for the amount that is withdrawn. The right of option is subject to the following cumulative conditions:

1. The commuted amount must not exceed 10% of the value of the accrued pension entitlements to the old age pension.
2. The partial commutation should take place on the commencement date of the old age pension, or in the month of February following the year in which someone reaches the statutory retirement age. This will, among other things, mean that no old-age pension contributions are then payable on the lump sum.
3. Partial commutation cannot be combined with the application of a high-low arrangement. This is where the level of the old age pension is allowed to vary, usually with higher pension benefit payments in the first years after retirement.
4. The remaining lifelong pension benefit payments after the partial commutation should lie above the commutation limit for small pensions.
5. The participant must have the consent of the partner who is the beneficiary of the partner pension.

The commuted portion of the old age pension will be taxed as salary from former employment. No deemed interest is payable on the commuted portion. The aim is to have the proposal take effect on January 1, 2022. The bill does not address the tax treatment of the commutation of part of the old age pension in an international context.

Motion by Oomen-Ruijten (CDA parliamentary party) et. al.

On January 19, 2021, the Upper House of Parliament adopted the motion by Oomen-Ruijten, in which the government is requested to:

- clarify the provisions of the right of option for a lump sum payment in order to prevent undesirable effects;
- postpone the introduction of a lump sum payment until 2023 and to look for an alternative and less complex implementation.

Temporary easing of pseudo-final levy for early retirement schemes
During the evaluation of the pension system it was found that especially older employees were taken by surprise by the rapid rise in the state retirement age. To offer these employees the opportunity to retire while still healthy, a wide range of agreements were made. One of these agreements is that employees will temporarily be given more options to retire early, without this triggering an RVU levy. Specifically, the temporary easing will entail:

- Employers may pay employees who will reach the state retirement age within three years a benefit upon early retirement that is equal to the net state pension after payroll taxes and social security contributions have been withheld. This benefit is exempt from the RVU levy up to a maximum of the net amount of the state pension payment in the year in question.
- The proposed more flexible approach will apply during the years 2021 through 2025. If an early retirement scheme was agreed in writing on December 31, 2025 at the latest, benefits can, subject to conditions, still be paid during the years 2026 through 2028 under transitional rules.
- If an employer pays an allowance earlier that three years before the state retirement age is reached, the normal RVU levy will be payable. The employer will also have to remit the RVU levy on that part of the amount exceeding the exemption.

This is based on the assumption that the early retirement takes place with mutual consent. According to the government, it should be possible for employees who wish to continue working to do so. The government is thus indicating that its focus continues to be on promoting the participation of older employees in the workforce.

Criticism by Council of State
The Council of State has criticized the proposal. It contends that the above measures are unlikely to offer much of a solution for employees in physically demanding occupations. Many of these employees already have great difficulty working until the 'old' state retirement age of 65 years. The exemption for the RVU levy will have little effect on them. In addition, the Council of State pointed out that the attractiveness of this exemption may mean that the participation of older employees in the workforce may decline. This will be at the expense of measures introduced in recent years to promote the long-term employability of older employees.

The proposed exemption is generic in nature, in order to leave room for customized agreements at the sectoral level/the level of the employer. The government indicated that, at the collective labor agreement level, employers' and employees' organizations are best placed to assess for which groups of employees the scheme should apply. Because employers must finance the scheme and employees will in many cases have to contribute part of their own pension to supplement the benefit payments under the early retirement scheme, the government assumes that there are sufficient checks and balances. The Council of State has stated that employers' and employees' organizations cannot be expected to include the public interest of long-term employability in their assessment.

Lump-sum payment and leave savings scheme

Lastly, the government is using the bill to expand the option of a leave savings scheme. Currently, an employee can only save a maximum of 50 weeks of leave for which tax relief is provided. This tax relief limit will be increased to 100 weeks. The accrued leave can be (partially) taken up at various times during a career. For example, it can be used to work less hours a few years before retirement or to take extended leave during the career. It also gives employees the option to retire early on full pay.

Should you have any questions about the above, Meijburg's advisors would be pleased to use their expertise to help you.

Meijburg & Co
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