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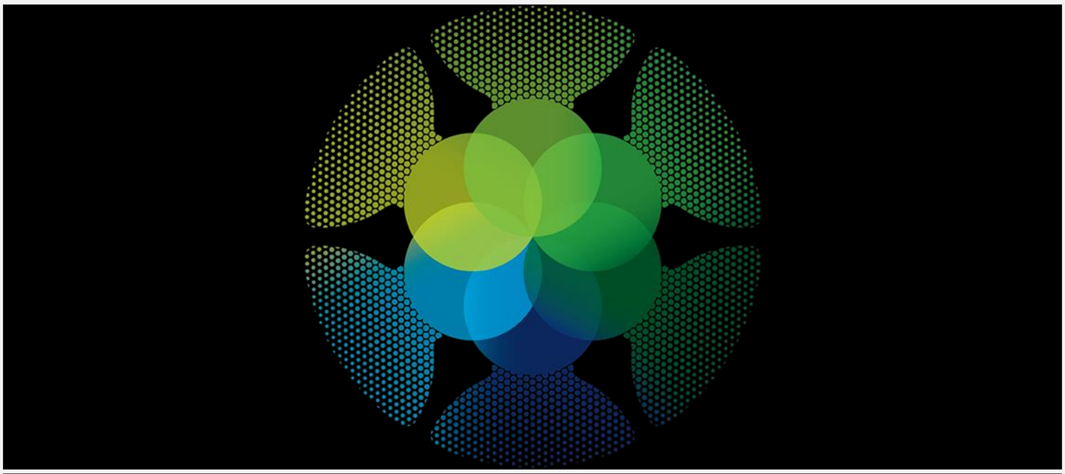
Belgium | Deloitte Tax | 19 November 2019



Global Employer Services
Pensions

Update on Belgian tax treatment of Dutch self-administered pensions

The Belgian tax authorities have provided an update on the Belgian tax treatment of Dutch grandfathering rules applicable to self-administered pensions ("*pensioenen in eigen beheer*"), in the hands of director-major shareholders ("*directeur-grootaandeelhouder*" or "*dga*") qualifying as resident taxpayers of Belgium.

Context

Since 1 July 2017, it is no longer possible for a "*dga*" to maintain a self-administered pension plan.

According to Dutch pension law, a beneficiary (in general the director or shareholder of the company administering the self-administered pension plan) has the option to surrender the pension plan ("*afkoop*") to then convert it into a self-administered savings variant ("*Oudedagverplichting*" or "*ODV*"), or to freeze the pension plan ("*bevriezen*"). This choice should be made before the end of 2019. In all cases, pension accrual should no longer take place.

Overruling a previous circular letter of 2017, the Belgian tax authorities have clarified their position on the tax treatment of the various options in the hands of the beneficiary qualifying as Belgian resident taxpayer (Circular Letter 2019/C/109 dd. 18 October 2019 – Dutch | French).

1. Freezing the pension plan

The pay-out to a Belgian resident "*dga*" will be fully taxable in Belgium at progressive income tax rates.

2. Pension plan surrender

The "*dga*" can opt to surrender the pension plan. In that case, he/she is entitled to a discount for tax purposes in the Netherlands (19.5% in 2019).

The surrender value should normally be taxable in the Netherlands; Belgium will have to exempt the income with reservation as to progressive tax rates. However, Belgium will claim taxing rights on the discount, as this part of the surrender value has not been effectively taxed in the Netherlands.

3. Conversion into a savings plan

The "*dga*" can also opt to fully convert the pension plan into a savings plan ("*ODV*"). Such conversion into an *ODV* will be treated as a tax neutral occurrence.

Once this conversion has taken place, the "*dga*" has three options:

3.1. Conversion of the ODV into an external life annuity scheme

The transfer of the *ODV* into an external life annuity scheme will qualify as a taxable process in Belgium.

Belgium will tax the transferred amount upon transfer, unless it is effectively taxed in the Netherlands.

Any income received from the external life annuity product following the transfer will be considered (and taxed) as movable income in Belgium, unless the amount exceeds EUR 25,000 and the Netherlands has effectively taxed the income.

3.2. No transfer into an external life annuity scheme

In the absence of a transfer, the *ODV* is paid in equal instalments over 20 years as of AOW ("*Algemene Ouderdomswet"*) age.

These instalments should normally be taxable at progressive income tax rates in Belgium.

3.3. Redemption with a discount

The "*dga*" can still request the surrender of the *ODV* in 2019, and benefit from a discount as described above (2. Pension plan surrender).

Comments

In order to determine the correct tax treatment of payments from a self-administered pension plan in Belgium, further investigation, while taking into account the specific circumstances of each case, is highly recommended.

Contacts

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