

# EFFECTIVE PENSION INFORMATION FOR MOBILE CITIZENS: WHERE PENSION AND TAX LAW INTERSECT

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From different perspectives, and due to a variety of circumstances, the need for cross-border pension information seems ever-increasing. The author discusses these circumstances and elaborates on how these circumstances underline the need for cross-border pension information. Nevertheless, the provision of cross-border pension information seems to be hampered by a number of tensions and paradoxes. The author addresses these and argues that they should be given more attention.

## THE MOBILE WORKER-PHENOMENON AND EFFECTIVE PENSION INFORMATION

It is becoming increasingly important for (mobile) participants to get a grasp of their pension status-quo, and engage in pension planning in order to secure an adequate retirement income. In this regard, effective cross-border pension information constitutes a first step

towards financial resilience in old-age, potentially tackling a European-wide societal predicament. This predicament relates to a wide range of developments and phenomena, which have put pension systems, their sustainability, and the benefits under pressure. Moreover, risks pertaining to the pension's adequacy have been increasingly shifted towards (mobile) individuals. Parallel to these developments, states' pension systems and financial markets grow more complex, and individuals are confronted with highly complex and often irreversible economic decisions. It follows from this that it is becoming increasingly important for (mobile) participants to get a grasp of their pension status-quo, and engage in pension planning in order to secure an adequate retirement income.

The central role of pension information in planning for retirement gains importance in cross-border situations. In case of working cross-border, accordingly pension entitlements will be accrued across the varying (former) working, and/or residence, states. These pension entitlements will, in principle, be dispersed over these different states and possibly different jobs. What is more, mobile individuals – who avail(ed) themselves of their European freedoms of movement – see themselves confronted with a wide range of diverging pension vehicles, schemes, retirement products of all sorts, arising from statutory, occupational and individual pension systems in each of the different (former) working states, and/or residence states. By being mobile, they enter the field of the intersections between different

multi-level legal systems (national, EU and international/bilateral) and the interaction of poorly coordinated legal domains (pension and tax law), which can all be interwoven in a personal mobile work situation. This fragmentation of pensions is further exacerbated by the high diversity in the methods of tax treatment of statutory, occupational and individual pensions in each state, as each state may have different tax rules in place for each of these arrangements. While the relevance of cross-border pension information appears to be evident, the path towards achieving the provision of this cross-border pension information seems intricate.

Ideally, these mobile workers should have an overview of their pension rights, pension entitlements and pension payments. This overview should further contribute to providing better access to information, and thereby increase people's ability to make informed decisions, which best cater for their interests and, eventually, secure or foster their financial resilience at retirement, i.e. secure their pension adequacy. In order to establish such an aggregated overview, similar pieces of information – such as figures and data – about other (foreign) sources of pension income, retrieved from different pension providers, are required.

## TENSIONS IN PENSION INFORMATION PROVISION

The provision of pension information inevitably leads to tensions between four principles delineating information's effectiveness: the understandability, (legal) correctness, personal relevance and trustworthiness of the information provided. Understandability of information ensures that the participant also understands how much pension he/she can expect after retirement, taking into account personal characteristics such as financial literacy. This is often at odds with the (legal) correctness of pension information as pension information providers tend to overload the participant with a multitude of information regarding his pension in order to avoid being held liable for incorrect or incomplete information. In order to avoid civil liability for incorrect/incomplete pension information, pension information is often provided with a disclaimer, stipulating, for example, that no rights can be derived from the information provided. The inclusion of such a disclaimer in turn has a negative effect on the credibility of the information. As a result, readers will tend to rate the value of the information lower and feel as if they are still not fully informed. Finally, personal relevance of pension information increases readers' involvement in their own pension situation. Indeed, research findings support the proposition that pension participants are more inclined to study the information if its personal relevance is higher.

## EFFECTIVE PENSION INFORMATION PROVISION: WHAT IT REQUIRES IN TERMS OF THE UNDERLYING LEGAL SYSTEMS

Providing, on an aggregated level, mobile individuals information about their pension requires a complex process of incorporating all types of diverging pension vehicles, schemes, products of all sorts, arising from statutory, occupational and individual pension systems in each of the different (former) working states, and/or residence states. Moreover, it requires observing/applying all relevant domains of fragmented (national) legislation. For instance, it is pivotal that the accrued pension entitlement and the pension to be achieved are calculated in the same way. This requires a process of converging these deviating systems into standardised/uniform information provision, while upholding the information's effectiveness. Putting this dispersed puzzle together also poses considerable challenges in terms of information provision.

This amounts to observing, and 'translating' the intersections between different multi-level legal systems (national, EU and international/bilateral) and the interaction of poorly coordinated legal domains (pension and tax law), which can all be interwoven in a personal mobile situation, into effective pension information. In sum, it must be possible to compile the amounts accrued with different pension providers/schemes so that they can be processed in a standardised manner.

For instance, in order to uphold (legal) correctness, combined with understandability, of information, national legal systems need to be aligned in terms of coherence. In addition, to ensure the information's correctness and – in the long run – trustworthiness, regulatory frameworks need to adhere to legislation's foreseeability. This elucidates how the realms of empirically-gained insights from behavioural economics, economic psychology and cognitive psychology,



and the realm of multi-level legal systems are related. As the OECD puts it, laws and regulations should be considered as an 'information system' linking (government) administration and citizens. Furthermore, a variety of difficulties may make it difficult for governments to translate new laws and rules into reality. These difficulties relate to complexity, inconsistency, lack of coordination, and lack of information on the effects of laws.

### **TAX LAW AS PART OF EFFECTIVE CROSS-BORDER PENSION INFORMATION**

As has been addressed in the above, by availing themselves of their European freedoms of movement, mobile individuals see themselves confronted with a wide range of diverging pension vehicles, schemes, retirement products of all sorts, arising from statutory, occupational and individual pension systems in each of the different (former) working states, and/or residence states. While incorporating the tax treatment of (cross-border) pensions plays a central role in effective cross-border pension information this incorporation is highly complex and may induce considerable tensions in information provision.

The mobile workers' fragmented pension is for tax purposes treated differently per Member State, while the fiscal treatment in turn depends on the qualification of the pension as such. This fiscal treatment depends on a wide variety of factual circumstances, such as his working status during his/her working period, i.e. for instance, was he/she a posted worker or cross-border

worker? Furthermore, in these cases the complexity grows due to the vast differences in the national tax treatment of pensions, mainly due to the lack of harmonization or poor coordination of pension tax law between Member States. The national tax systems offer different modalities as regards tax benefits, relief, reductions, exemptions, compensation, deferrals and other fiscal advantages.

However, to some extent, these systems have been 'aligned' and brought in conformity with the European Single Market, as a result of 'negative integration' (CJEU's infringement procedures) and 'positive integration' (European Commission's Communications). It should be noted in this regard that this is not akin to harmonization of these tax systems. Moreover, in cross-border situations several systems/levels of legislation are interconnected and interaction has nested, e.g. domestic law, international tax treaties, and a supra-national level of European law. This also holds with regard to the application of Caribbean tax legislation. For instance, when it comes to the Caribbean part of the kingdom of the Netherlands, the *belastingregelingen* (tax regulations) take a central role pertaining to the distribution of taxing rights on income, including pension benefits. Like tax treaties, these regulations take precedence over domestic law and, moreover, the structure is not much different from a treaty. Despite that these tax regulations qualify as state laws (*Rijkswetten*), there are also significant differences between these different tax regimes that render the provision of effective

pension information difficult. For instance, where art. 17, para 1 of the Belastingregeling Nederland-Curaçao (as well as the Belastingregeling Nederland-Sint Maarten) provides that pension benefits shall, in principle, be taxable in the residence state, para 3 provides that these pension benefits may be taxed in the source country. However, if such payments are periodic in nature, the source state-taxation shall not exceed 15 percent of the gross amount of the payments. What is more, art. 15, para 4 of the Belastingregeling voor het Koninkrijk stipulates that pension benefits shall be taxable in the residence state. The same holds for art. 2.9 para 1 of the Belastingregeling voor het land Nederland, setting out that pensions shall be exclusively taxable in the residence state. These fiscal peculiarities may have a potential detrimental effect on the ambition to provide effective pension information.

Moreover, in this complex multi-layered system, each of the different layers of legislation have adapted to new and different challenges, for instance on a societal, political or economic level. What is more, provisions of these different fields of legislation may also conflict with each other, and each level may have a particular effect on a personal mobile situation. Since pension (tax) systems are as diverse as countries themselves, finding a common way

of communicating about pensions is not an easy task. When it comes to communicating about pensions, it is certainly true that 'one size does not fit all'.

## CONCLUSION

The need for effective cross-border pension information seems unquestionable. The lack of a comprehensive overview of the pension situation of mobile workers seems anachronistic in an era of an increasingly complex pension field and increasingly difficult financial decisions. Despite promising research, its development is lagging behind. The challenges and obstacles to cross-border pension information are multifaceted and discussed in this article, and are characterised by tensions and paradoxes. These tensions and paradoxes deserve profound attention in future research and the ongoing developments in the domain of (cross-border) pension information.



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