S&S

PENSION CONSULTANCY

Global Expat Pensions

GERMANY EDITION

INTERNATIONAL PENSIONS

PASSION FOR PENSIONS AND RESULTS

Focus on your Results

We provide independent pension consultancy for the (inter)national business market. Our challenge is to optimize your pension results.

Affinity for expats

Expats have a uniquely challenging business and private life. As we appreciate their drive and competitiveness, we have affinity for expats. It is our challenge to optimize their pension interests from day one.

Expats require customization

Each expat has a special situation and personal preferences. Business and personal circumstances can change in time. Therefore only customization can provide the required optimal international (risk) coverages, cost control and flexibility.

Standard financial products might seem practical. However, they tend to be (extremely) expensive, not flexible and not providing customized coverage.

Expats in Germany

Germany has the biggest economy in the EU and is the largest trading partner of the Netherlands. This has attracted many Dutch expats. Therefore we will now focus on pension related issues of especially Dutch expats in Germany.

Germany: centre of the EU

International versus local contract

The first distinction to be made is the difference between an international and local contract.

In case of an international contract from for example a Dutch Holding company, rather strict Dutch civil and fiscal pension law is applicable. Whereas a local German contract is dictated by entirely different strict German pension law.

Taxation in Germany

Germany is a federation. 95% of all taxes are imposed on a federal level. Personal income tax is one of the most substantial.

German Personal Income Tax

Taxable income

Expats residing in Germany are taxed on their worldwide income. Expats not residing in Germany are only taxed on their German source income. The German taxable income consists of the income minus allowed deductions.

Tax rates

The tax rate has the following progression:

Taxable income			***Tax rate***
€ 0,-	-	€ 8.354,-	0 %
€ 8.355,-	-	€ 52.881,-	14 %
€ 52.882,-	-	€ 250.730,-	42 %
€ 250.731,-	<		45 %

Surcharge on income tax

In order to improve the economy in the eastern states, there is a 5.5% solidarity surcharge tax for an indefinite period. The surcharge is a percentage on all individual income taxes. The combined maximum rate is 47.5%.

Tax incentives for occupational pension premium

Due to existing tax ceilings regarding certain kind of pension schemes, the height of the incentives can be modest for expats.

It is advisable to address this issue before opting for an occupational pension plan.

Tax treaty

In order to avoid double taxation, Germany has tax relief treaties and agreements with 90 countries.

In 2012 a new tax treaty and a protocol between Germany and the Netherlands was signed. It replaces the old treaty of 1959. It applies to income received by residents of either State as of January 1, 2016. The treaty is binding for both countries and precedes national tax legislation.

We will now sumarize the most relevant parts of the treaty for in Germany residing Dutch expats in group context.

A) Residency

The expat resides in Germany if in succession his sole home/permament residence/centre of his life is in Germany. If this is not conclusive than the residency is decided by the place where he usually resides or finally the State of which he is a subject.

B) Wages

An expat who resides in Germany and receives wages and related remunerations due to his employment will only be taxed in Germany. In case the employment is executed in Holland, Holland is also allowed to tax these related wages and remunerations.

An expat who resides in Germany and works in Holland will nevertheless only be taxed in Germany if he is annually no longer than 183 days in Holland and his wages and remunerations are not financed by an in Holland residing employer or permanent establishment.

C) Board member remunerations
An expat who resides in Germany and is member of the (Supervisory) Board of a in Holland residing company, can also be taxed in Holland regarding these wages and related remunerations.

For the sake of completeness: As of 2016 German legislation dictates that a member of the Board of a in Germany residing company will be taxed in Germany even if he might live abroad.


Typical German excellence

D) Pensions and annuity
Pension and annuity terms paid from Holland to an expat in Germany are only taxable in Germany. Even if the payment is based on the Dutch social security system. However, if the annual payments exceed € 15.000,- Hollland is also allowed to tax these terms. In case there is no annuity but only a lump sum payment from Holland, Holland is also allowed to tax.

In case Holland has previously provided tax relief for pension or annuity terms from Holland, Holland is treated as the State of origin. Which is not influenced by a previous cross border transfer of capital.

E) Pension premium
When in one State premium has been paid for a recognized pension plan in the other State, then this premium will also be tax wise classified as pension premium in the first mentioned State if

- the employee already paid pension premium before he started his employment in the first mentioned State and
- the authority in the first mentioned State states that the pension plan equals the tax wise recognised pension plan.

F) Civil servants
Special rules apply to the wages and remunerations paid by either State to its regular civil servants. If employees are employed by a State owned private company, the described general rules apply.

G) Salary split
If an expat works regularly in different countries in which his employer has (affiliated) companies, a salary split can be profitable. Thus the taxable income is sourced to several countries in order to benefit from lower tax rates. The basis of the salary split are the double tax treaties that Germany has signed with other countries like Holland.

It is advisable to take the effect of a salary split on the pension coverage into the equation.

H) Tax relief

Tax exemption

If a Dutch expat resides in Germany and receives from and in Holland taxable income, it will in general be exempted from taxation in Germany. Germany however remains entitled to incorporate thus exempted income when determining the tax rate.

Tax credit

Dutch taxation can be credited against the German imposed tax regarding:

- wages and remunerations of a Board member.
- pension and annuity terms of annually more than € 15.000,- or of a lump sum nature.

'Voluntary' implementation of homeland rates

Some foreign based companies implement on a non governmental bases and therefore voluntarily the homeland tax rate. Besides the probably higher rates and withholding, it is advisable to beforehand look at all pension implications.

German Social Security

The German system

Tax and social security regulations and authorities are legally separated from each other. Social security issues are not handled by tax authorities.

Mandatory participants

Germany's social security system applies to all employees who work and are paid in Germany.

German social security coverage

The German social security coverage entails 6 coverages:

1. Old age pension insurance
2. Health insurance
3. Unemployment insurance
4. Invalidity insurance
5. Social care
6. Child support

We will now mention certain notable facts:

1. Old age pension insurance

The amount of old age pension when retired depends especially on the previous income and the number of years one has worked in Germany.

2. Health insurance

From many insurance companies the employee can choose the prefered one. The employer will then register the employee with that fund. The basic premium is the same whichever health fund one chooses. Some funds demand an additional contribution.

If the annual income exceeds € 54.900,- one is not bound to be a member of a statutory insurance fund. One is still obliged to be insured but one can join a private health insurance fund.

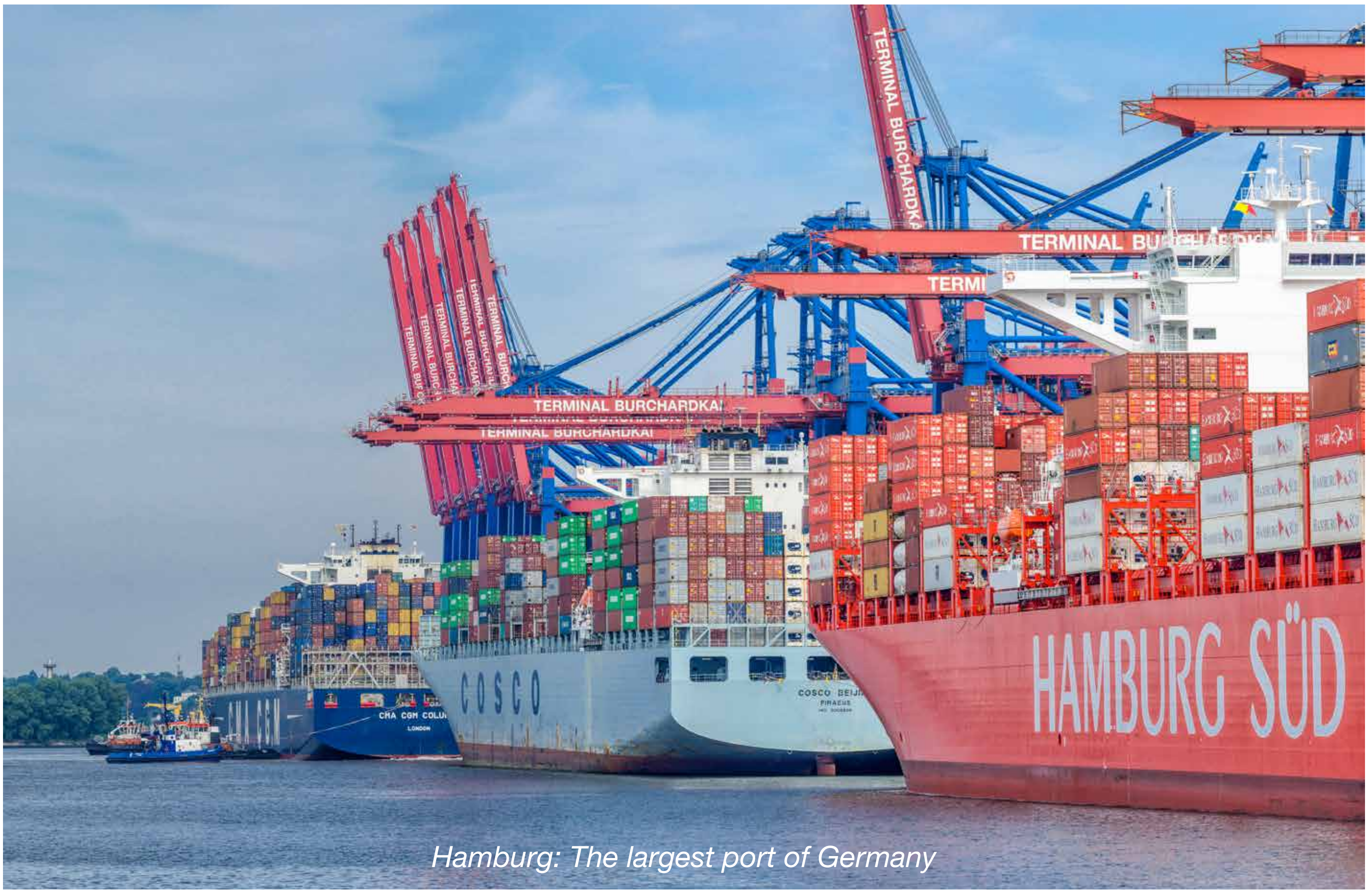
3. Unemployment insurance

The unemployment benefits usually are only paid to those who have at least paid full social security premiums for two years.

German social security premium

The premium is paid equally by employees and employers. The employer pays the total contribution directly to the insurance funds. In general it amounts for each to 21% of the wages up to a ceiling.

The premiums regarding old age pension and health coverage are the most substantial. The amount of premium can differ slightly due to location, kind of branch and size of the company. Due to the lower income in the former eastern part, it has a reduced premium due to a lower ceiling.



Hamburg: The largest port of Germany

Expats

Expats residing in Germany fall within the realm of German social security. However, often double coverage is prevented by EU regulations or bilateral agreements.

Expats who are seconded to Germany for a limited period and continue to be paid by their non-resident employer are therefore often not subject to German social security premiums. An obligation to withhold social security premiums therefore does not generally arise for non-resident employers.

Desired coverage for expats
Expats have to decide what kind and amount of coverage they prefer for their family regarding in general disability, passing away prematurely and old age risks.

Voluntary continuation of homeland coverage
In several home countries it is possible to voluntarily continue the domestic coverage while working abroad as expat. It is advisable to carefully compare the offered coverage with the required premium.

Voluntary continuation of Dutch homeland coverage
Dutch expats in Germany have three separate possibilities:

A) During maximum 10 years expats can insure coverage for governmental old age and next of kin pension at the SVB. The coverage has to be requested within 12 months at the end of the previously existing mandatory coverage.

B) During maximum 5 years the expat can insure himself for governmental disability and unemployment coverage at the UWV. Required is that the expat has a Dutch employer and requests the coverage within 13 weeks after the ending of his previously existing mandatory coverage.

C) In case an expat is seconded for maximum 2 years by a Dutch employer, he can apply by means of a A1/E 101 Declaration for total Dutch social security coverage at the SVB.

This regards i.e. not only old age and next of kin pension coverage but also disability and unemployment coverage. A requirement is that the expat previously was insured by Dutch social security.

Private insurance coverage
Another option is to provide for the desired coverage by private insurance. In this respect the following issues are relevant:

- Starting this coverage while still living in the homeland might save 50% premium.
- Participating in a collective coverage facilitated by the employer might save premium.
- Regarding the next of kin and disability coverage do you prefer capital or annuity?
- Is annual indexation of the coverage to keep up with inflation required?
- Determine your wishes regarding capital and/or risk based coverage.
- Check possibly existing corporate coverage for only being valid in case of accidents.
- Substantial annual bonuses might reduce your required future coverage and costs.

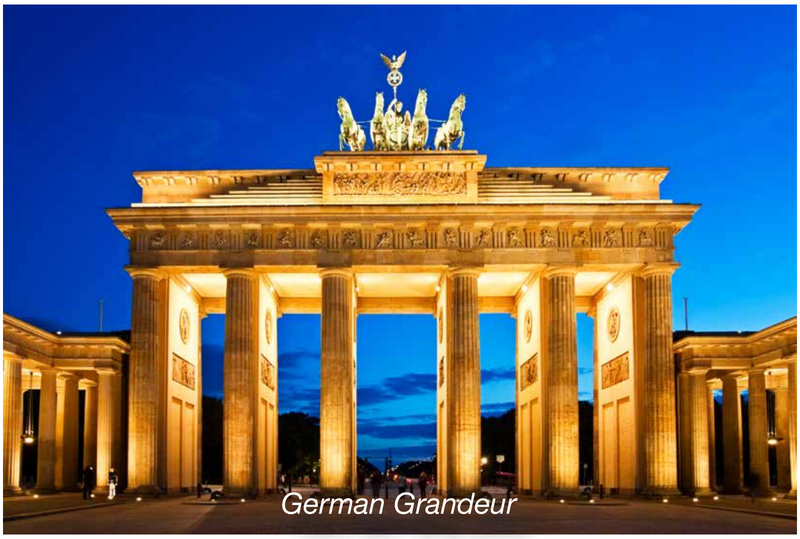
Pensions in local contract

Legal basis

Dutch expats with a German contract fall within the realm of the German pension system.

Pension basics

German pension law defines an occupational pension claim as a claim regarding old age, next of kin and disability coverage. Occupational pensions are in general not mandatory. They are often organised by the social partners.



German Grandeur

Allowed institutions

German pension law grants i.e. four kind of institutions the opportunity to cover occupational pension claims:

A) Pension fund (Pensionskasse-Pensionsfonds)

Under the scope of the EU IORP Directive assets are segregated from the sponsoring company. Participants have a direct claim against assets. This is i.e. comparable to Dutch pension funds.

B) Direct insurance (Direktversicherung)

Under the scope of the EU Solvency 2 Directive this regards the classic pension insurance scheme of an insurance company. Participants have a direct claim towards the insurance company. This is i.e. comparable to Dutch insured pension plans.

C) Incompany coverage (Direktzusage)

Outside of the scope of the EU IORP/Solvency 2 Directives this regards only a book reserve scheme. Assets are not required to be separated from the sponsoring company. Participants have no direct claim against underlying assets.

Where in option A and B the assets are safeguarded outside of the sponsoring company, in this option the participants only have a general claim towards the employer. This option saves the company and employees the profit and costs surplus of an insurance company.

For participants this results in increased risk in case the company is not healthy. The average employee is due to the BetrAVG in case of insolvency of the employer conditionally protected by the legally mandatory coverage of the PSVaG in Cologne. Which takes care of the reinsurance to a consortium of 51 life insurers. The employers pay the related premium which is linked to the present value of the accrued vested benefits.

There are also companies who cover the insolvency risk by direct reinsurance. This is especially welcome for managers and directors who might not have the mentioned PSVaG coverage.

In Holland incompany coverage is not possible for collective pension plans. Dutch pension law prefers pension capital to be out of reach of the sponsoring company.

D) Support fund (Unterstützungskasse)

Outside the scope of the EU IORP Directive it is a separate entity that implements pension claims as granted by the employer. It is a book reserve scheme. Assets are not required to be separated from the sponsoring company. Participants have no direct claim against underlying assets. They do have a claim towards their employer.

In the 'pauschaldotierten' version it is usual to invest the premium meant for capital creation freely in the sponsoring company. In the 'rückgedeckten' version the pension claims are usually reinsured.

Regarding the insolvency risk the coverage as mentioned under section C is applicable.

Allowed institutions on tax and prudential requirements

Each institution has its own tax and prudential requirements position. For example regarding the treatment of contributions, benefits, own funds, investment restrictions and underfunding.

It is advisable to take these differences into account during the selection process.

Allowed systems

German pension law allows three kind of pension systems:

A) Defined Benefit (DB)

In this system the granted pension claim is a totally guaranteed pension annuity. The participant has no investment or interest risk.

The one uncertainty that might exist is that it is not always included for the pension to be annually totally indexed in order to compensate for inflation:

- There is no obligation to index DB claims during the deferred period.
- Pensions in payment must be indexed with the Consumer Prices Index every three years.
- Pensions financed by contributions from the employees must be indexed by at least 1% annually.
- In case of a Pensionskasse the benefits have to be indexed with 2.25% annually.

Due to low interest rates this system has become expensive and increasingly out of fashion.

B) Defined Contribution (DC)
In a pure DC system the pension claim consists only of the annual deposited premium. This premium will be invested. The total thus created capital will at pension age be used to acquire an annuity. Only the participant has the mentioned total investment and interest risk.

A pure DC system is not allowed according to German pension law. It does not accept a system which gives the total risk to the participant. Therefore it only allows DC if there is a certain minimum return on investment. As this system is less expensive than the DB system it has become increasingly popular in Germany.

In order to improve the occupational pension coverage in Germany, there have been proposals in 2015 to make it possible to have a pure DC system with tax incentives and with a modified PSVaG coverage.

C) Hybrid system
This system is a combination of a DB and DC system.

Own contribution
In Germany it is increasingly standard for an employee who participates in a pension plan to have an own contribution.

International transfer of value
German pension law does not in general forbid transfer of value. However, there are many strict tailormade regulations. Therefore it is advisable for expats to seek advice on this issue before participating and investing in a pension plan.

Riester and Rürup pensions
As of 2002 each resident/expat can invest in a voluntary individual pension plan with tax incentives. It is advisable to check this possibility against other options for additional coverage.

Pensions in International contract
Many expats have an employment and pension contract directed by the homeland jurisdiction.
We will now focus on current pension issues of such Dutch expats in Germany.

Decreased maximum Dutch pension claims
As of 2015 the maximum amount of pension earning wages regarding old age and next of kin pensions amounts to € 100.000,-. The maximum amount of pension claim is as of 2015 and based on old age pension age of 67:

Defined Benefit system with final pay clause:

Old age pension claim	: 1,657 %
Next of kin pension claim	: 1,160 %
Orphan pension claim	: 0,232 %

Defined Benefit system with average pay clause:

Old age pension claim	: 1,875 %
Next of kin pension claim	: 1,313 %
Orphan pension claim	: 0,263 %

Defined Contribution system:
These percentages are derived from the maximum Defined Benefit pension claims. They are calculated at a 3% or 4% discount rate. As of 2015 these percentages have to be listed without costs.

Decreased pension claim compensated correctly?

For many expats this results in a seriously decreased pension claim. According to Dutch jurisprudence, total compensation is in order.

Has this been implemented to the right extend and in the right manner? Especially regarding Defined Benefit pension claims this is an interesting issue. It is in the interest of expats to use among other parameters the correct (future) interest rate and future period.

ECB located in Germany....

Attractive compensation possibilities

If the existing pension scheme is attractive, it is an option to have the mentioned compensation invested in the current plan:

- In the past not totally used fiscal possibilities can i.e. still be used.
- Often the annual bonus is not included in the standard pension earning wages. In this respect however it can i.e. be included in order to calculate the maximum fiscal possibilities.

Net Pension

In order to 'compensate' the end of pension claims beyond € 100.000,- pension earning wages as of 2015, the Net Pension has been introduced by the Dutch government.

In general in Holland the pension claim and pension build up are not taxed until pension age. Then the terms are taxed annually. The current own contribution of premium is according to Dutch tax law in general tax deductible.

The Net Pension option provides an additional pension claim. The annual premium is taken from the net (after tax) wages and the terms at pension age are not taxed. Tax is totally by passed. In Holland the positive aspect is that one currently does not have to pay 1,2% capital tax in Box 3 of the Dutch Individual Income Tax.

Net Pension can only be implemented by a Defined Contribution system. Participation is voluntary. As with each kind of pension premium, the wages administration of the employer takes care of the premium payment and of the withholding from the wages of the participating employee.

Net Annuity

The essential difference with the Net Pension is that it is taken out of the legal pension sphere and therefore totally private. The positive effect thereof is that the strict Dutch pension legislation does not apply. A negative effect is that a medical test is legally allowed.

Existing expat pension claims

Many expats have in the past already acquired substantial pension claims. Due to lack of time and expertise these claims are not always handled in the best way. For instance the annual effect of indexation deserves attention as its total effect during for example 25 years will be substantial.

Has been looked into the possibility and desirability of (inter)national transfers of value? As these issues are rather technical, professional advice seems desirable.

Optimal pension system

Due to the historically low interest rates and the introduction of the Defined Contribution based new PPI system in 2011, the Dutch PPI system can be very interesting for expats.

Regarding PPI please take among other parameters the following issues into account:

- Besides low cost levels the annual return on investment is outstanding?
- Does the PPI have the by you required investment possibilities?
- Their Life Cycle propositions are well structured and one can choose between defensive/neutral/offensive?
- Regarding the possibly by you required risk coverage you can choose between several insurance options?
- It is possible to end the PPI contract on short term?

Consultancy for Expats/HR

Our expat services can be provided exclusively for expats or HR. Another approach is that we mediate between expats and HR. After we have analyzed all facts, we advise them both about all options and the most realistic solutions. This approach tends to cut costs and can be implemented swiftly.

International experience and network

We have more than 20 years of experience in international expat and collective pension consultancy. Thus we have an elaborate international network. If so desired, we can advise and act swiftly in international matters.

Contact

For further information please contact pension jurist/consultant Patrick Donders:

Tel: +31 (0)6 26014112
E-mail: p.donders@senspc.nl
Site: www.senspc.nl

AFM license number 12043181

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