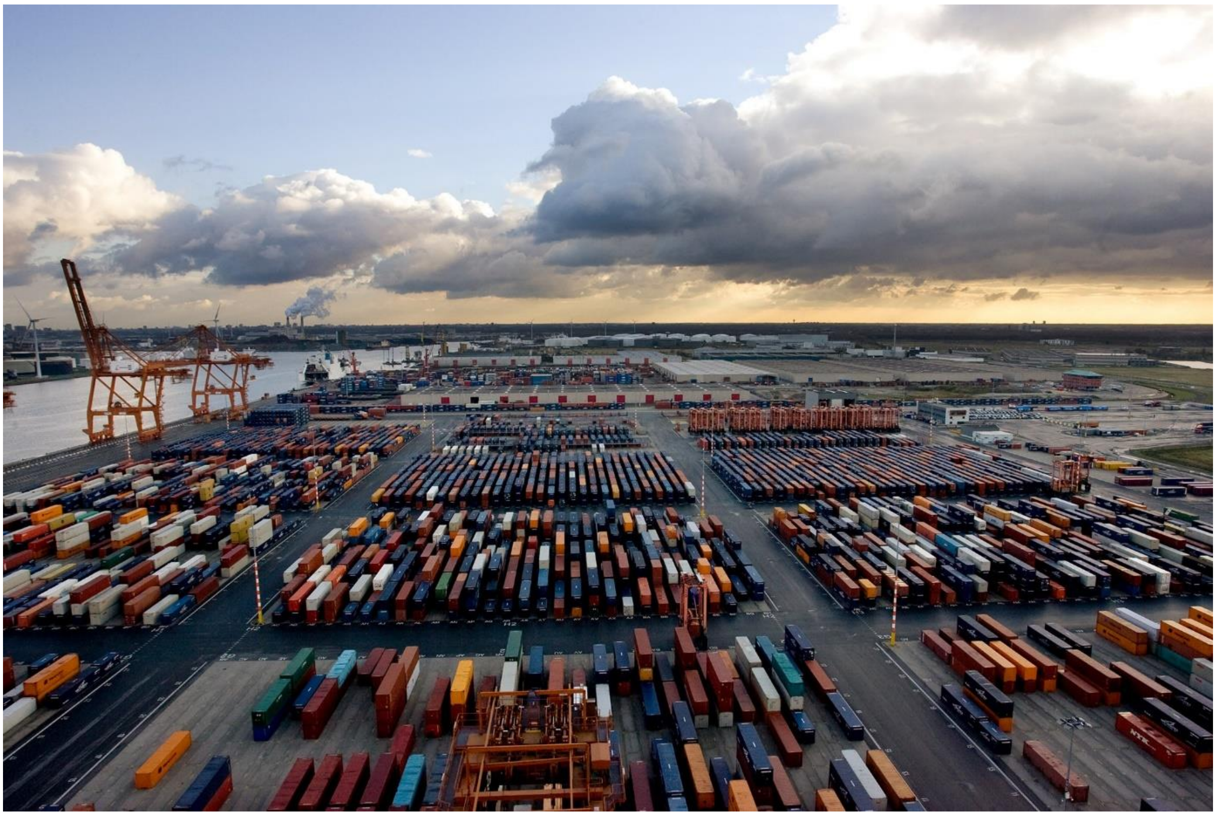
KWPS

Employee Benefits & Risk Management



Pension in the Netherlands

I Introduction

Dutch pension providers manage some € 1,500 billion for Dutch employees and retired people. This capital is an important reason why a small country of over 17 million inhabitants is able to invest globally, and why pension legislation and pension systems in the Netherlands are so meticulous. While worker protection is an absolute priority, pension schemes need not always be complex and expensive. This brochure explains the Dutch pension system and its main aspects.

1.1 The Dutch pension system

In the Netherlands a clear distinction can be made between:

1. The state pension
2. Supplementary pension schemes (as agreed by employee and employer)
3. Individual savings and private insurance policies

This brochure focuses on supplementary pension schemes, with the state pension (AOW) and individual plans being only briefly discussed in this introduction.

1.2 State pension ('AOW')

As in many other European countries, the Dutch government provides a state pension. Everyone who lives in the Netherlands is automatically insured, regardless of their nationality. For each year that inhabitants are insured they build up the rights to 2% of the full state pension (AOW). The law has regulated that the AOW-age has increased from 65 in 2015 to 66 in 2018 and will further increase stepwise to the age of 67 and 3 months in 2023. The state pension is paid from the AOW-age and funded by contributions from residents younger than the AOW-age (pay as you go system). The level of state pension depends on the statutory minimum wage and the personal situation (living alone or together).

1.3 Individual savings and private insurance policies

Employees can often deposit extra premiums in supplementary pension schemes from their employers. If the costs of these extra deposits were negotiated at a low price, this is a good way for the employee to save for a higher and/or earlier pension. Employees can also choose to save for themselves outside of the supplementary pension scheme. In such cases they are considered individual savings and private insurance policies rather than a pension. Apart from saving capital on a bank account, it is possible by means of (limited) tax relief and taxation on payments to save for:

- Annuity (private pension scheme at an insurance company)
- Bank savings (private pension scheme at a bank or investment company).

2 Supplementary pension schemes

While there is no legal obligation for employers to offer a pension to employees, more than 90% of employees in the Netherlands participate in a supplementary pension scheme provided by their employer. The main reason for this high rate is that, in approximately 70% of cases, a compulsory supplementary pension scheme applies for the industry in which the employer operates. Such schemes are provided by industry-wide pension funds, managed by representatives of employers and employees. When an employer decides to offer a pension scheme in the Netherlands it is therefore important to determine first whether the company has to join a compulsory industry-wide pension fund.

Although a fixed retirement age is not determined in supplementary pension schemes, this is commonly set at 68 (the target age for tax purposes) as from 2018. In most cases the participant has the possibility to receive payments before the retirement age if the employment is terminated. Should the employer agree, it is possible to keep working after the retirement age and postpone the pension payment.

2.1 Seven types of pension providers can be identified:

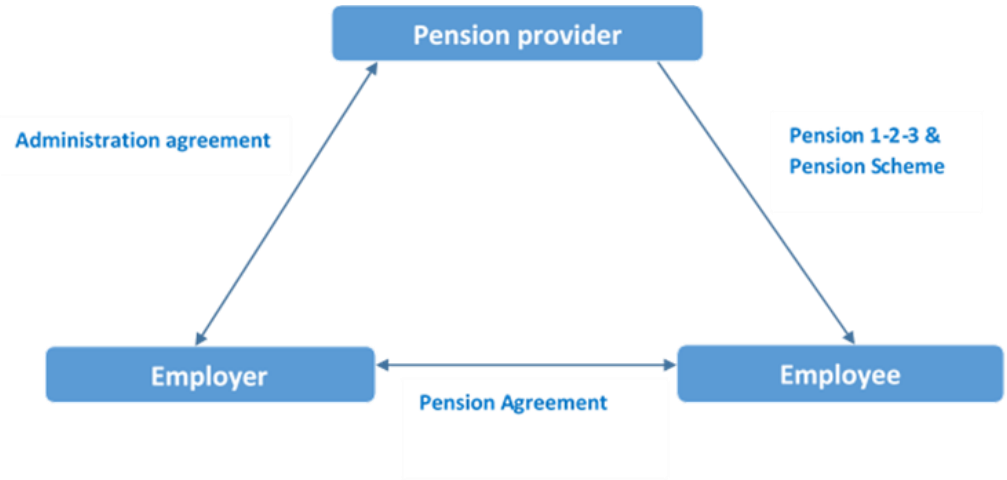
a) Compulsory Industry-wide pension fund (52 funds in 2018)
b) Non-compulsory industry-wide pension fund (7 funds in 2018)
c) Occupational pension fund (10 funds in 2018)
d) Company pension fund (186 funds in 2018)
e) Pension & life insurance company (around 8 larger/well-known in 2018)
f) Premium pension institution (PPI, 10 institutions in 2018)
g) General pension funds (APF, 7 funds in 2018)

2.2 Legal documents

The Pension Act ('Pensioenwet') is the main law related to pensions in the Netherlands. When an employer and employee enter into a pension agreement, the Pension Act contains the terms and conditions with which the pension provisions and agreement must comply. By introducing the Pension Act the Dutch government clarified the division of responsibilities between the parties involved. There is a triangular relationship between employee, employer and pension provider. The basic principle of this relationship is that pensions are part of the terms and conditions of employment. The following relationships exist within this triangle:

- The relationship between the employer and the employee, who together have a pension agreement.
- The relationship between the employer and an external pension provider to whom the administration of the pension agreement is outsourced on the basis of an administration agreement (contract).
- The relationship between the pension provider and the employee, as a result of the outsourcing of the administration of the pension agreement. The pension administrator provides the employee with the pension scheme and an explanatory letter, called Pension 1-2-3.

Pension Triangle



Pension agreement

The pension agreement should be provided by the employer and contains the pension arrangements between employer and employee as part of the overall remuneration and benefits. The pension agreement states which type of pension system (also see 2.3) applies:

- Defined benefit agreement - the participant is entitled to a certain pension payment, based on final pay or average pay.
- Defined contribution agreement – the participant is entitled to a pension premium, which will be invested and result in a pension capital that is converted into a life-long payment at the retirement date.

Capital sum agreement - a defined capital sum that is disbursed at the end of the term and must be converted into life-long payments at the retirement date. It is also possible to design tailor made hybrid pension arrangements which are a combination of a defined contribution and defined benefit scheme.

Administration agreement

Once employers conclude a pension agreement they are obliged to arrange the administration of the agreement with a pension provider. Arrangements for the administration of the pension agreement (via the signing of an administration agreement) must be made no later than the date on which an employee acquires any pension entitlement. The pension provider will set up the administration agreement, which should be thoroughly checked by the employer.

Pension scheme

The pension regulations are drafted by the pension administrator according to the pension and administration agreement. The pension scheme should be checked by the employer and must be in accordance with the pension agreement.

Pension 1-2-3

Pension providers are obliged to provide new participants with an easily understandable explanation of the pension scheme within three months after enlisting. As of 2017 this document is called Pension 1-2-3. Employers must see that this happens and that the contents of the document are in line with the pension agreement.

2.3 Pension systems

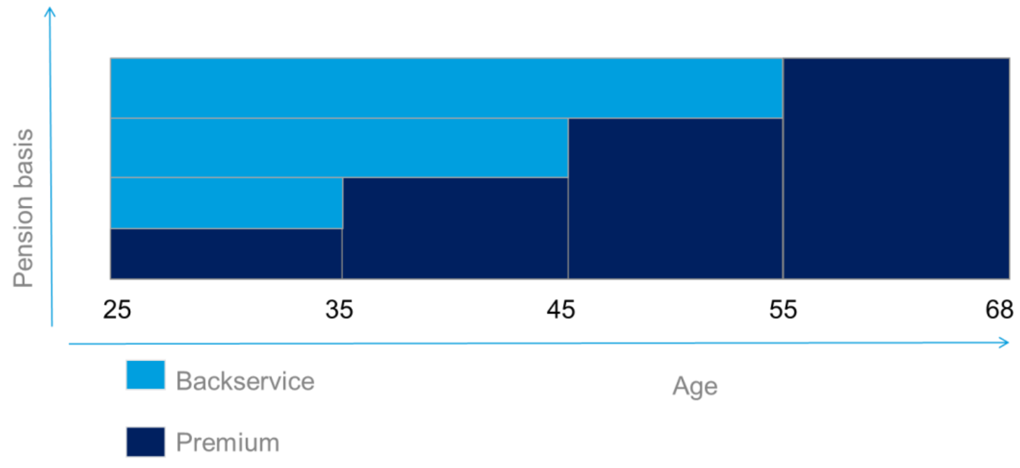
There are various systems for accumulating pension benefits. Every pension scheme must take into consideration the state pension as pensions can only be built-up over the salary minus the AOW-deductible amount. The minimum AOW-deductible amount that should be taken into account in 2018 when determining the annual accrual of the supplementary pension is € 13,334.

Example:

The gross annual salary of an employee is € 50,000. The minimum deductible for state pension is € 13,334. This employee therefore has a pensionable base of € 36,666. The maximum pensionable salary is fixed at € 105,075 (2018). As of 2015 it is no longer allowed to accrue tax facilitated pension benefits for the excess salary. For salaries above € 105,075 the government created a savings facility which implies net deposits from the employee while the capital is exempt from wealth tax.

Final pay scheme (defined benefit)

In this defined benefit system, the pension is related to final pay. In case of a rise in salary, the entire pension is increased with retroactive effect. The costs of funding additional prior benefits resulting from subsequent increases in salary are known as past-service costs. The yearly accrual equals a percentage of the pensionable base. The maximum percentage for tax purposes is 1.657% accrual a year as from 2015. Final pay schemes are very rare in the Netherlands, due to the past-service element.

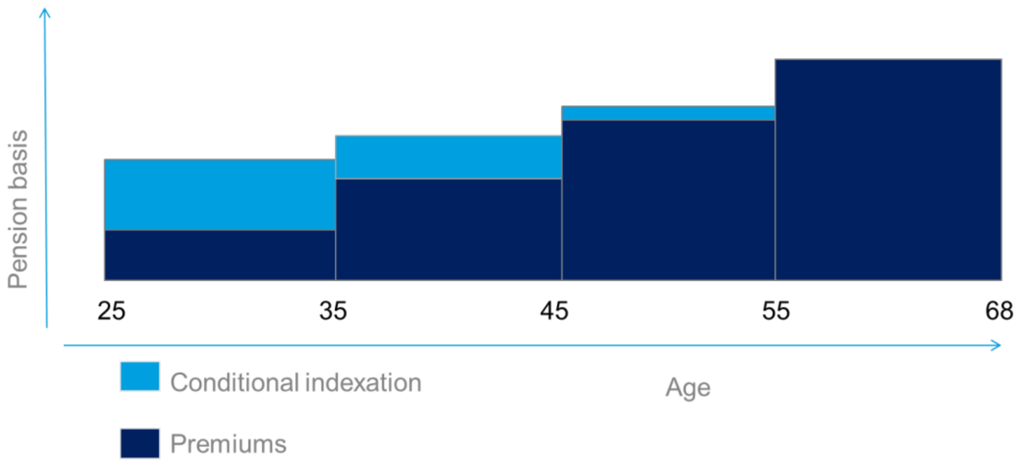


Average pay scheme (defined benefit)

In an average pay scheme, pension accumulation occurs for each year of service. The accrual in each particular year is linked to the salary earned in that year. There is no past-service benefits accrual should a salary increase. The yearly accrual equals a percentage of the pensionable base. The maximum percentage for tax purposes is 1.875% accrual per year as from 2015. The total accrual is the sum of the annual accrual and in most cases this accrual is conditionally indexed.

Average pay systems are very common in compulsory industry-wide pension funds. The premium to be paid to industry-wide pension fund is an equal percentage of the salary for each employee. This average premium is under enormous pressure due to longer life expectancy, aging of the workforce, low interest rates and poor yields. Without further measures the premium to be paid to pension funds (and insurance companies) for defined benefit schemes will increase sharply.

More and more pension funds are changing to hybrid pension schemes in which life expectancy and profit will influence the final height of the pension.



Defined contribution scheme

A defined contribution scheme confers the right to a pension contribution rather than a fixed pension payment as under a final pay or average pay scheme. Under a defined contribution scheme, the ultimate pension benefits depend on the amount of the contributions and the yield that is achieved. There is no guarantee other than a guaranteed contribution. A defined contribution scheme is common when pension providers are insurance companies.

The annual (gross) premium is determined by multiplying the (maximum) age-dependent percentage by the pensionable base for that year (see table hereafter). Besides this premium the employer has to pay the costs of risk insurances and administration. If the pension capital produces a yield of 4%, a defined contribution scheme is in principle equivalent to an average pay scheme. There is also a table based on a yield of 3% with higher maximum percentages, for the use of which additional rules apply.

Age category from 21 - 67 years	Percentage of the pensionable base (based on 1.875% yearly accrual in an average pay system) based on 4% discount rate	Percentage of the pensionable base (based on 1.875% yearly accrual in an average pay system) based on 3% discount rate
21-25	4,4	7,7
25-30	5,4	8,9
30-35	6,6	10,4
35-40	8,0	12,0
40-45	9,8	14,0
45-50	11,9	16,3
50-55	14,6	19,0
55-60	18,0	22,3
60-65	22,4	26,5
65-67	26,8	30,6

Besides the premium tables mentioned here fore it is also possible to determine a flat rate premium. The flat rate premium cannot exceed the maximum premium for the youngest employee, therefore (considered the youngest possible participating employee being 21) with a maximum of 4.4% or 7.7%.

Capital sum agreement
A capital sum agreement is quite unusual in the Netherlands. In short, its goal is to achieve a fixed capital on the retirement date. In contrast to a defined contribution scheme, the capital on the retirement date is guaranteed. The size of the pension payment and the height of the pension premium are therefore unpredictable.

2.4 Pension benefits
The type of pension benefits in general are not depending on the pension system. Common pension benefits in a Dutch scheme are mentioned below.

Old age pensions
An old age pension secures lifelong income for an employee from the retirement date. It requires a projected retirement age to be set, which must in principle be 68.

Spouse's pensions
A spouse's pension secures income for an employee's partner after the death of the employee and starts immediately upon death. Its maximum per year of service as of 2015 is 1.16% of (fictitious) final pay.

Orphan's pensions
An orphan's pension secures an income for children or foster children after the death of the employee and starts immediately upon death. It is paid provisionally until such time as the children or foster children reach the age of 30 years at most. Orphan's pensions amount to a maximum of 14% (for full orphans 28%) of (fictitious) final pay.

Occupational disability pensions
An occupational disability pension secures an income in the event of employees being disabled for longer than two years due to illness, incapacitation or an accident. This pension is paid in addition to the state disability benefits (WIA) after the first two years of illness/disability (see point 4.2 below).

While there are no tax constraints applicable to occupational disability pensions, they may not exceed an amount generally accepted as reasonable based on current standards. This may be loosely interpreted as meaning not more than 85% of final pay.

Occupational disability premium waiver (ODPW)
If ODPW is covered by insurance, participation in the pension scheme continues in the event of occupational disability without any premiums having to be paid.

2.5 Employee's contribution
In the Netherlands it is common for employees to contribute to the pension scheme. The average contribution is between 4% and 7% of the pensionable base (salary minus AOW-deductible amount). Compulsory industry-wide pension funds however generally apply higher employee's contributions.

2.6 Pension and employment contract
It is general practice, and recommendable, to incorporate the participation in the pension scheme into the employment contract. In general the employment contract could state for instance:

- "The employer offers the Employee the opportunity to participate in a pension scheme that qualifies as a <Pension system>. The pension scheme is administered by <name insurance company or pension fund>. The pension scheme has been agreed between the Company and the Employee and is outlined in the appendix to this employment contract, referred to as 'Pension Agreement'.

- The employer shall reserve the right to reduce or terminate its contribution to the pension scheme in the event of a drastic change of circumstances. Such a drastic change shall at least be deemed to have occurred if the pension provider were to amend its pension scheme.
- The employer shall be authorised to amend the Pension Agreement without the Employee's consent being required if and when the employer believes that there is such a serious cause that outweighs the interests of the Employee in accordance with the standards of reasonableness and fairness."

The pension agreement itself should always be aligned with the specific elements of the pension scheme. This involves tailored advice.

3 Transfer of pensions

3.1 General rules

In the Netherlands every employee has the right to transfer his/her accrued pension to the pension provider of the new employer under certain conditions. Whether a transfer is beneficial will depend on many factors. The characteristics of both schemes should be compared. Employers are not obliged to cooperate with an individual pension transfer if the charge for the employer exceeds € 15,000 and is more than 10% of the transfer value (which is only the case if it regards a DB scheme).

3.2 Transfer to the Netherlands

In principle the Dutch pension provider will cooperate with an incoming value transfer and will act as the receiving provider. Depending on tax and other legislation the transferring provider will cooperate, impose conditions or refuse the transfer. Once the pension capital is transferred to the pension provider of the Dutch employer very strict Dutch rules will apply. For instance the pension cannot be received as a lump sum and an outgoing value transfer abroad is not always possible. In the Netherlands pension will not be paid out to heirs. A pension transfer to the Netherlands will therefore not always be favourable.

3.3 Transfer from the Netherlands

If an employee considers a value transfer from the Netherlands he or she should contact the Dutch pension provider. This transferring provider will assess whether a transfer is possible and under which conditions. Approval of the Dutch Tax Authorities is required for a tax-free transfer. A transfer to a country outside the European Union could prove to be difficult. An international transfer of pension could easily take several months or more.

3.4 Taxation of your pension

The pension will be taxed by either the country where the pension was accrued (country of origin) or the country the employee retires (home country). This depends on local legislation and tax treaties concerning avoidance of double taxation.

4 Pension related issues

4.1 Sick pay

In the Netherlands employers are required to pay 70% of an employee's wages for the first 104 weeks of illness or disability. Under the terms of most Collective Labour Agreements, employees receive 100% pay over the first 52 weeks and 70% during the second 52 weeks. It is possible for employers to take out insurance to cover the risk of continued payments.

4.2 Disability benefits (WIA)

If employees are still unable to resume work in full after two years, the WIA scheme takes effect. WIA stands for Work and Income according to Labour Capacity Act. Depending on the degree of disability, the government provides WIA payments. The WIA payment is based on the maximum wage for social security (2018: € 54,614) and amounts to 70% of this maximum wage.

4.3 Accounting standards

For most internationally operating companies it is mandatory to determine future obligations with respect to employee benefits. This also concerns pension schemes. The classification of a pension scheme determines if there are any obligations. If the pension scheme can be qualified as a Defined Benefit scheme (i.e. final pay or average pay in the Netherlands) this could have negative consequences for the balance sheet for accounting purposes (such as IFRS, IAS, US GAAP, FAS).

If a pension scheme can be qualified as a Defined Contribution scheme then no obligations arise for the balance sheet. The pension schemes of compulsory industry wide pension funds ('bedrijfstakpensioenfonds') are usually average pay schemes. Mostly these schemes however can be qualified as a Defined Contribution scheme for accounting purposes.

We would like to emphasize that the obligation is merely determined for accounting purposes and based on possible future situations and assumptions. If this obligation arises it doesn't mean that the company actually has to pay extra pension premiums.

4.4 Equal treatment

The Pension Act and Dutch Civil Code states that employees and participants in a pension scheme are entitled to equal treatment. For example, men and women pay an equal percentage of their salary in contributions and accrue equal pension rights. Equal treatment also applies to people who work part time or full time, and for employees with a temporary or permanent contract. The Pension Act also prohibits discrimination related to age. Employers with a pension scheme must include employees from the age of 21 in their pension scheme.

4.5 Wage taxes and individual taxes

Pension rights are not taxed at the time they are awarded if the particular scheme qualifies for wage tax purposes.

A pension scheme qualifies if:

a) the limits set by the Dutch wage tax act are not exceeded;
b) all formal provisions are complied with;
c) the pension insurer is permitted to operate as such under the law.

Employees' contributions to a tax qualified pension scheme are deductible for wage tax and income tax purposes. The employer's contribution is not treated as part of the salary. The pension is not taxed until the payment of benefits, which are taxed on a progressive scale.

After retirement, individuals can deduct mortgage interest from pension benefits. As a rule, the pension is taxed in the country where the employee lives. Given that it is the pension benefits that are taxed and not the pension rights, there are good opportunities for pension tax planning. A further consideration is that by accumulating a pension, taxation under personal property tax Box 3 (wealth tax) is avoided. Box 3 consists of 30% taxes per year on fictitious returns per year determined by its investment class.

Class	Your (part of) basis of savings and investing	Tax rate by fictitious return rate of 0,36%	Tax rate by fictitious return rate of 5,38%	Tax rate by average return rate
1	Up to € 70.800	67%	33%	2,017%
2	€ 70.801 - 978.000	21%	79%	4,326%
3	As of € 978.001	0%	100%	5,38%

4.6 Corporate tax

In principle, employers can deduct all costs related to the pension scheme, including the employer’s contribution, for corporate tax purposes.

4.7 Pension supervisory bodies (DNB and AFM)

In the Netherlands, the Dutch Bank (DNB) and the Authority Financial Markets (AFM) are responsible for monitoring pension providers. DNB performs material and prudential supervision over pension funds and considers the financial assessment framework and pension fund governance. The AFM supervises the conduct of pension administrators, covering the provision of information prescribed by law and the duty of care with regard to defined contribution schemes.

5 Roadmap and KWPS service offering

In this brochure we explained the main characteristics of the Dutch pension system. Below we present you with an impression of our basic service offering if a defined contribution scheme is set up (see point 2.3).

Step 1 - Research into Industry wide pension fund / applicability of Collective Labor Agreement regarding pensions

Why? An employer will have to make sure that no compulsory pension scheme or CLA regarding pensions is applicable.

Step 2 - Consider setting up a company pension scheme or just providing an allowance to the employee

Why? If a company pension scheme is set up, this will consume time and money since pension is a complicated product, a lot of choices will have to be made and must be tuned to the situation that fits your company. A company pension scheme will be appreciated by most employees.

If an allowance is paid out to the employee this allowance is considered as wage and therefor is taxed. For the employer this is very simple. The employee however should decide whether to set up a private annuity or savings plan and make sure that risk coverages will be in place.

Step 3 - Interviewing you and setting up the outlines of the DC pension scheme (blue print)

In an interview we will discuss the details of the plan (coverages and premiums) and will provide you with more information. Based on the interview we will present you with a blue print of the future DC pension scheme that fits the branch/entity in the Netherlands.

Step 4 – Ask for proposals from insurance companies

Based on the blue print we could ask for a proposal from one preselected provider. This will save you fees of KWPS. For the year 2018 KWPS selected a provider that is able to communicate and provide its documents in English, has reasonable costs and provides for standard investments. We make sure that the insurance company is subject to regular supervision by the Dutch Bank and the Dutch Authority for the Financial Markets. We will submit a request for a proposal, assess it and report you about it.

If you want KWPS to only ask one proposal, you declare that you are aware that this offer could prove not to be the best offer in the market. We emphasize that there are no business or personal links between KWPS and the preselected provider.

If you want a fair but still not an exhaustive comparison between several pension providers based on the blue print of the future pension scheme we will ask for three proposals from pension providers and will assess the proposals for you. This is a standard yet more expensive approach. Based on our assessment you will be able to select a pension provider and can sign the proposal of the pension provider. Our fee for these activities is of course higher. In scope is a basic comparison between the investments and yields the pension providers provide for the DC pension scheme.

Step 5 – Implementation of the scheme

In this phase we will present you with a pension paragraph for the employment contract, we will make final agreements with the pension provider and will assess the various documents the pension provider will produce for you and your employees. Your company will have to sign the implementation agreement with the pension provider.

Step 6 – Communication of the scheme

This step is optional. In a personnel conversation with the employee we can make clear what the elements of the scheme are. If more employees are involved collective presentations can be taken care of by KWPS and/or we can provide you with information letters for the employees. The pension provider can also take care of some aspects in the communication of the pension scheme.

Step 7 – Pension management

This step is optional. The pension contract will have to be managed if changes in coverage occur (salary, employment, termination of employment, change of marital status etcetera). This can be done either via the portal of the pension provider or by KWPS. KWPS can perform checks and balances on premiums, coverages and investments.

About KWPS

Clients

KWPS has been able to make a contribution to a large number of organisations, varying from intensive consulting and change process to workshops or sounding board sessions. The following companies and organisations are examples and have given us permission to list their name here.

Essent, KLM, Koninklijk Theater Carré, Schiphol Group, USG People, GrandVision, SBM Offshore, Transavia, Martinair, Driscoll's of Europe, Newomij, Randstad, Cobra Museum, Sanoma, VSNU DVB Bank, DS Smith Packaging, De Stiho Groep, TomTom, Fresenius Kabi, Sun Chemical, Tate & Lyle, IBFD, Exter Aroma.

Board

Jan-Olivier Kuijkhoven LL.M., taw lawyer

Jan-Olivier worked at PricewaterhouseCoopers between 1995 and 2006, where he led the pension tax team. Jan-Olivier is founding partner of KWPS and advises, among others, on integrated change operations, is an acknowledged pension tax lawyer and in this capacity has regular contact with the (Knowledge groups of the) Dutch Tax authorities. He advises HR and EB managers as well as supervisory and company directors about group (directors') pensions, retirement, remuneration and alternatives for pension. Jan-Olivier heads up the 'KWPS Academie voor Advocaten' and publishes regularly.

Natasja Winter MSc., fiscal economist

Natasja worked at PricewaterhouseCoopers between 1996 and 2006 in their tax and pension practice. She is founding partner of KWPS and assist companies in pension change and consulting processes arising from legislative changes, cost savings, changes in employment conditions, due diligences and exit schemes. Natasja is a trainer at the 'KWPS Academie voor Advocaten' and guest lecturer at the University of Maastricht. She also publishes regularly. Natasja is a member of the Pension Committee of The Dutch Association of Tax Advisers.

Kris Rote MS., business economist

Kris is managing director at KWPS and chairman of the Management team. He worked in different countries in Europe and Asia for, among others, Accenture Consultancy, Procter & Gamble and De Baak. Kris has been active in HR services for more than 15 years. Kris has been active in HR services for more than 15 years. Kris manages the whole non-content related part of the organisation. Both Kris and the partners are supported by a professional team of consultants and management assistants.