# BELGIUM

Prepared by Delta Lloyd Life.

## I SUMMARY

### Social Security

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|---|---|
| Eligibility | All gainfully employed persons, including foreigners. |
| Retirement Age | 65 M/F |
| Contributions | There is no ceiling for social security contributions. Both employers and employees contribute. |
| Retirement Benefits | Old Age Pension: 60% (single person) - 75% (married person) of average index-linked earnings limited to the social security ceiling for retirement pension per year of service (or assimilated to service).<br>The old age pension is index linked as from the start of its payment and is payable until the death of the retiree. If the deceased was married the old age pension is transferred to the widow(er) at a rate of 80% of the old age pension. |
| Disability Benefits | Disability Benefit: First month 100% salary (paid by employer). Additional months 60% of salary up to a ceiling for one year. Afterwards adapted according to marital status etc. |
| Death Benefits | Survivor's Pension: Married for at least 1 year, minimum age of spouse 45 or at least 66% disabled or with a dependant child. Pension = 80% of the deceased person's old age pension. |
| Medical Benefits | All employees, spouse, dependant children, orphans and/or disabled children, unemployed and expectant mothers. |

## Private Benefit Plans

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|---|---|
| Eligibility | Age 25, at the latest, for all employees of specified category. |
| Retirement Age | The *Vandenbroucke law* does not state a retirement age for supplementary pension plans. Yet, according to the law, a benefit can be paid out only in three circumstances:<br>(a) When the beneficiary dies,<br>(b) When the beneficiary reaches the term age set in the pension rules,<br>(c) When the beneficiary retires and claims for social security pension.<br>Furthermore, the law sets an absolute age limit: any benefit must not be cashed before the age of 60. |
| Contributions | Most plans are contributory for employees, but strong tendency towards non-contributory. |
| Retirement Benefits | Old Age Pension:<br>• Defined benefit: 60% - 75% of final (average or final) salary related to service (max. 40 years).<br>• Defined contribution: Depending on total contributions paid and interest on reserves as well as on pension price at retirement.<br>• Retirement Lump Sum (very common for tax reasons):<br>• Defined benefit: 2 times salary up to ceiling plus 8 times above ceiling related to service (max. 40 years).<br>• Defined contribution: Based on flat-rate or step-rated contributions<br>• Very often the plan is contributory: part of the contributions is paid by the employee, most commonly at a ratio of ¾ paid by employer and ¼ paid by employee. |
| Disability Benefits | • Total disability: 10% - 20% salary up to ceiling plus 60% - 80% salary above ceiling. Waiting period minimum 30 days.<br>• Trend towards escalating disability pension. Increases between 0% - 5% depending on plan. |

| | |
|---|---|
| Death Benefits | • Spouse's Pension - Defined benefit: Often 40% of salary (including assumed social security benefit) or 60% of projected old age pension. Value of widow's/ widower's pension often at least 1 - 2 times annual salary.<br>• Orphan's Pension - Defined benefit: 5% of salary or 10% - 20% of projected old age pension. Usually double for full orphans.<br>• Lump Sum Death: Usually 2 - 4 times annual salary instead of widow's/widower's pension, plus 0.5 times annual salary per dependant child. |
| Medical Benefits | Usually provided as part of benefit plan. |
| Vesting | Full vesting. Maximum vesting period 1 year if in plan rules, otherwise immediate vesting. |

### Taxation

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|---|---|
| Employer Contributions | Employer mandatory social security contributions are fully tax-deductible. Employer contributions to private retirement, death and disability plans are tax-deductible, except for medical. |
| Employee Contributions | Employee mandatory social security contributions are fully tax-deductible. Employee contributions to retirement and death plans benefit from a tax reduction provided certain conditions are met. |
| Benefits | Pension (old age, widows, disability etc.) stated in rules: taxable at marginal rate (up to 50%).<br>Lump sum (retirement, death):<br>• 16.5% on employer benefit<br>• 10% on employer benefit if paid out at 65, if effectively active until that age<br>• 10% on employee benefit<br>Pension (old age, widows) converted from a lump sum taxed as above: rate of 15% payable on the notional value of the annuity, which is calculated by converting the lump sum into a pension using an assumed interest rate of 3%. |

## II INTRODUCTION

### Country Statistics

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|---|---|---|
| Population*/<br>growth rate* | 10,449,361 (July 2014 est.)<br>0.05% (2014 est.) | |
| Age structure*<br>0-14 years:<br>15-24 years:<br>25-54 years:<br>55-64 years:<br>65 years and over: | <br>15.6%<br>11.7%<br>40.4%<br>13.3%<br>19% (2014 est.) | |
| GDP purchasing power parity*<br>Real growth rate*<br>Agriculture*<br>Industry*<br>Services* | USD 421.7 billion (2013 est.)<br>0.1% (2013 est.)<br>0.8%<br>22.6%<br>76.6% (2013 est.) | |
| Unemployment rate* | 8.8% (2013 est.) | |
| Inflation rate* | 1.3% (2013 est.) | |
| Annual average gross salary**<br>Para-Professionals*<br>Professionals*<br>Management*<br>Legal minimum wage | in EUR<br>General: 40,257<br>Junior: 56,063<br>Lower: 91,234<br>The basic minimum wage for salaried employees depends on age: from EUR 1,501.82 to EUR 1,559.38 per month (since April 2013) | <br>Skilled: 47,507<br>Senior: 69,684<br>Upper: 119,448 |
| Exchange rate on February 25, 2015<br>Currency: Euro | 1 EUR = 1.1204 USD | |

* www.cia.gov/library/publications/the-world-factbook/

**Source: Mercer's International Geographic Salary Differentials, Edition 2015

### Legislation and Insurance Market Update in Brief

*Gradual abolishment of the differential treatment of blue-collar and white-collar employees*

The Act on the gradual abolishment of the differential treatment of blue-collar and white-collar employees in the context of occupational pensions (the Act) provides that any differential treatment based on the distinction between blue-collar and white-collar employees which relates to any period of employment up until 31 December 2014 does not constitute discrimination.

Between 1 January 2015 and 1 January 2025, amendments must be made to all occupational pensions at company and sector level. Industries have until 1 January 2023 to conclude sector collective labour agreements dealing with any differential treatment between blue-collar and white-collar employees at sector level. During this period, employers also need to observe a standstill period. This means that (i) any existing differential treatment based on the distinction between blue-collar and white-collar employees may not be increased and (ii) no new distinctions between blue-collar and white-collar employees may be implemented.

Finally, as from 1 January 2025, there can, in principle, be no further differential treatment between blue-collar and white-collar employees in the context of occupational pensions. However, there are some exceptions to this rule.

### *Temporarily work on part-time basis*

The Royal Decree of 30 December 2014 amended rules relating to employees who wish to temporarily work on a part-time basis or take a break from their career. From 1 January 2015, the royal decree removed the availability of such benefit in the event of the employee being temporarily unemployed “without cause” and gradually increased the age at which pre-retirement employees become eligible for the benefit from 55 years in 2015 to 60 years in 2019, with at least 25 years in a professional career (although if certain conditions are met this could remain 55 years).

### *Agenda for pension and social security changes*

In October 2014 the new Belgian government produced its agenda for pension and social security changes. The government announced its intention to gradually increase the age for state pension from 65 to 67 years by 2030, with the minimum age for early retirement similarly being increased to 63 years by 2018 with a minimum of 42 years of service. In addition the employer contributions for social security are to be reduced to 25% by 2018.

*Source: Axco reports*

## III SOCIAL SECURITY

### Background Information

The Belgian social security system is complex and comprehensive, and changes in benefits may be made at any time due to the index system. The main social security system comprises of seven sectors:

- old age and survivors' pensions
- unemployment
- insurance for accidents at work
- insurance for occupational diseases
- family benefits
- compulsory insurance for medical care and benefits
- annual vacation

The Belgian social security organisation for salaried persons, the National Social Security Office (ONSS) is the central social security. It collects contributions from employers and employees and disburses funds to each of the seven payment institutions, each corresponding to one of the social security branches:

- Retirement benefits are provided by the National Pensions Office (Office National des Pensions - ONP)
- Health benefits provided by the health mutuals are supervised by the National Institute for Sickness and Invalidity Insurance (INAMI), and
- Unemployment benefits are provided by the National Employment Office (Office National de l'Emploi - ONEM).

Social security is financed from general taxation and employer and employee contributions.

At the end of 2005, as the prospect of an aging population and the strain it will represent for future generations became ever more real, the Belgian government undertook a long-term reform of social security. Consisting of no less than 66 measures, the pact of solidarity between generations introduces first and foremost stricter requirements for retirement below the age of 60, as well as incentives to stay longer in the labour market.

### Eligibility

With the exception of some managerial staff that can be treated as self-employed, all gainfully employed persons are covered (including foreigners).

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## Contributions

| Sectors | Employee Contribution* | Employer Contribution* | Total* |
|---|---|---|---|
| 1. Sickness and invalidity | | | |
| - medical care | 3.55% | 3.80% | 7.35% |
| - invalidity benefits | 1.15% | 2.35% | 3.50% |
| 2. Unemployment | 0.87% | 1.46% | 2.33% |
| 3. Pensions | 7.50% | 8.86% | 16.36% |
| 4. Family benefits | 0.00% | 7.00% | 7.00% |
| 5. Accidents at work | 0.00% | 0.30% | 0.30% |
| 6. Occupational diseases | 0.00% | 1.00% | 1.00% |
| Total | 13.07% | 24.77% | 37.84% |

*Employer and employee pay contributions to social security on the basis of gross annual salary - no ceiling applies.

Source: http://www.socialsecurity.fgov.be/

*Miscellaneous*

Besides those mentioned above, the employer may be obliged to pay additional contributions to social security depending on the sector of economic activity. Furthermore, some situations (company in restructuring etc.) and some operations (company cars etc.) require the payment of social contributions as well. Some examples:

- Wage moderation contribution may be due which amounts to 5.67% of the worker's wage plus a 5.67% employer contribution. However, for certain categories of salaried workers, no wage moderation contribution has to be paid.
- Contribution for paid educational leave (0.05%).
- Contribution for the closure of companies, consisting of a general contribution ranging between 0.24% and 0.25%, and a special contribution of 0.30%.
- An increase by 0.40% of the wage moderation contribution for the employees subject to the laws concerning the annual vacation for salaried workers.
- A contribution of 0.05% for childcare.
- A contribution of 0.10 % for high-risk groups.
- A special unemployment contribution of 1.69% for employers employing on average ten or more persons during a reference period that starts with the fourth quarter of a given year and ends with the third quarter of the following year.
- A contribution of 0.01% of the total payroll is reserved for financing the Asbestos Fund.
- Employers who are bound by the law on accidents at work of April 10, 1971 have to pay a specific employers' contribution of 0.02% to cover the costs resulting from under-declaration of accidents at work, which causes a transfer of costs to the sector of sickness and invalidity.

It must also be noted that social security contributions by certain target groups have been reduced as one of the measures to promote employment for older employees, long-term job-seekers, new entrants to the job market, young employees, low salaried employees, etc.

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## Retirement Benefits

*Retirement Age*

| | |
|---|---|
| Normal retirement: | 65M/F. |
| Early retirement: | 60M/F possible, if the person who wishes to leave has been in employment for at least 35 years of service and contributions. As from 2013, the age for early retirement, i.e. 60 years, will be increased by 6 months annually until 2016, in order to reach 62 years. |

The new government has included in its Declaration that gradually the "normal" retirement age will be lifted to 67 as from the year 2015.

*Qualifying Conditions*

A person needs to have a career of at least 40 years of service as from 2015 in order to be able to go into retirement and to be eligible for retirement benefits. As from 2015 the earliest retirement age (apart from people having postponed their retirement in the last 2 years if they were eligible to leave earlier which hold a grandfathering right with regard to this earlier age) is lifted to 61 years and 6 months. Persons with a career of at least 41 years still keep the right to retire at 60 in 2015 and with 42 years of service in 2016.

*Benefits*

The Belgian social security retirement pension is expected to provide a sufficient replacement for the salary. Benefit calculation is designed to reflect the professional career of the retired person. The way in which the benefit is calculated somehow reflects the professional career of the retired person:

PENSION = 60% pensionable salary (years of service/45)

The pensionable salary is based on the number of years of active employment and on the gross annual salary (including bonus, holiday pay etc.) as originally transmitted to social security for the payment of the contributions. To account for the increase of cost of living and welfare, the salary is multiplied by a certain factor.

While contributions to social security are due on the total gross salary, for the calculation of the old age pension there is a ceiling for the income to be taken into account for the calculation of the annual entitlement.

The years and months credited are those effectively performed, increased by certain periods of inactivity (disability, unemployment etc.). As a full career comprises 45 years, one credited year counts for 1/45 of the pensionable salary related to that year. Until recently, women had only to account for 40 years of service. Under European pressure, the government was compelled to assure equal treatment of men and women.

Service years can be credited from the several old age pension systems of wage-earners, self-employed and civil servants. The person is entitled to vested rights in each system (mixed careers), with a maximum of 45 years. When a person has accrued more than this, the higher pensionable salaries are used.

The retired person receives normally 60% of the amount of pension thus calculated (single person rate). For a retired person whose spouse (male or female) has given up occupational activity or is not entitled to any social benefits (dependant spouse), the percentage is raised to 75% (household rate). For husband and wife who both have accumulated years of service, it is more advantageous for each to claim a pension of 60%. The National Office for Retirement Pensions (*Rijksdienst voor Pensioenen, Office nationale des Pensions*) automatically grants the most favourable "pension(s)" to which the household is entitled.

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There are maximum and minimum old age pension amounts set for individuals (single person rate) and families (household rate).

*The unemployment scheme with company supplement*

The former "Conventional Early Retirement Pension (Pre-Pension)" has been renamed Unemployment Scheme with Company Supplement Benefit since January 1st 2012.

When a member of staff is dismissed by an employer at 60 or earlier (not lower than 58), the application of a collective convention (CCT) can be claimed in order to enjoy pre-pension benefits. The age for early withdrawal from the labour market results from collective bargaining, either within the company or on an industry basis.

If employers should face acute economic difficulties or a major restructuring of their activities, the age can be lowered to 50 (more frequently to 52). This requires formal approval from the Ministry of Social Affairs. In addition to the condition of age, a minimum length of service may be required, as well as an obligation to replace the departing staff member.

The beneficiary receives the maximum amount of unemployment benefit. The beneficiary is also entitled to a complementary indemnity paid by the former employer, equal to half the difference between the reference salary and the unemployment allowance. The reference salary is the gross monthly salary up to a maximum amount, less the employee's social security contributions and income taxes.

Since January 1, 2012, the conditions for accessing the unemployment scheme with company supplement have been adjusted and are stricter. For instance, employees have to be of a certain age and have worked a minimum number of years in order to qualify for the scheme.
In addition, the new rules applicable to employees will be applied more or less rapidly depending on the date upon which the CCT (Collective Agreement / Convention Collective de Travail in French) was adopted in the sector concerned:

- for CCTs which were concluded for the 1st time after 31/12/2011, the new rules will be directly applicable (1st scenario below);
- for CCTs concluded and submitted before 01/01/2012 or concluded after 31/12/2011 and which constitute an uninterrupted extension of a CCT registered before 01/01/2012, the submission to the new rules will take place more gradually (2nd scenario below).

The example below shows when a 60-year-old employee will qualify for the unemployment scheme with company supplement for the subsequent years:

1st scenario:

<table>
<tr><th rowspan="2"></th><th colspan="2">Men</th><th colspan="2">Women</th></tr>
<tr><th>Age</th><th>Years worked</th><th>Age</th><th>Years worked</th></tr>
<tr><td>2014</td><td rowspan="3">60</td><td rowspan="3">40</td><td rowspan="3">60</td><td>38</td></tr>
<tr><td>2015</td><td>40</td></tr>
<tr><td></td><td></td></tr>
</table>

2nd scenario:

<table>
<tr><th rowspan="2"></th><th colspan="2">Men</th><th colspan="2">Women</th></tr>
<tr><th>Age</th><th>Years worked</th><th>Age</th><th>Years worked</th></tr>
<tr><td>2014</td><td rowspan="11">60</td><td>35</td><td rowspan="11">60</td><td>28</td></tr>
<tr><td>2015</td><td rowspan="10">40</td><td>31</td></tr>
<tr><td>2016</td><td>32</td></tr>
<tr><td>2017</td><td>33</td></tr>
<tr><td>2018</td><td>34</td></tr>
<tr><td>2019</td><td>35</td></tr>
<tr><td>2020</td><td>36</td></tr>
<tr><td>2021</td><td>37</td></tr>
<tr><td>2022</td><td>38</td></tr>
<tr><td>2023</td><td>39</td></tr>
<tr><td>2024</td><td>40</td></tr>
</table>

## Disability Benefits

### *Qualifying Conditions*

All employees and workers are entitled to disability benefits, provided that:

- They are affiliated to a social security medical fund
- The required contributions have been paid
- They have fulfilled a 6-month waiting period during which at least 120 working days were fulfilled
- They suffer from a sickness or injury causing at least a 66% loss of earning capacity

### *Benefits*

Long-Term Disability: After one year of working incapacity, the employee qualifies for further benefits, i.e. a disability pension as follows:

- For employees with dependants: 65% of annual salary up to a set ceiling per day
- For employees without dependants: 55% of salary, up to a set ceiling
- For employees whose spouse (or cohabiting partner) has a gross monthly income exceeding EUR 805.06: 40% of salary, up to a set salary ceiling per day

## Death Benefits

### *Qualifying Conditions*

The surviving spouse (widow or widower) must have been married to the deceased for at least one year, or there is a dependant child or else death was caused by accident or by occupational disease. Spouses must furthermore be at least 45 years old, unless they are affected by a full occupational disability (at least 66%) or have a dependant child.

Surviving spouses must not be gainfully employed with an income higher than EUR 17,280 (if under 65 and without dependants), or EUR 21,600 (if under 65 but with dependants). The spouse's pension can be cumulated with other social benefits (disability, unemployment etc.) for a period of 12 months. If older than 65, there is a ceiling of EUR 24,524.40 (with no dependants) or EUR 30,655.50 (with dependants).

Entitlement to survivor's pension is suspended if the surviving spouse remarries. This also applies if the spouse is less than 45 years old and no longer meets the conditions for payment of the pension.

*Benefits*

If the deceased was receiving a retirement pension, the survivors' pension is either equal to that retirement pension (if at single person rate) or 80% of the retirement pension (if at household rate). If, on the contrary, the deceased was not receiving a retirement pension, the survivors' pension is 80% of the projected retirement pension (calculated at household rate).
The retirement pension is calculated on the basis of the pensionable salaries and the years credited so far. Instead of 45 years, the length of career comprises the years counted from age 20 to the moment of death.

Furthermore, the surviving spouse is entitled to a temporary survivors' pension for a period of 12 months, if the conditions described above are not met.

## Sickness Benefits

*Qualifying Conditions*

See Disability Benefits above.

*Benefits*
Short-Term Disability (maximum one year): The employer pays 100% of the gross salary for the first 30 days of working incapacity (14 days in the case of blue collar workers). For the next 11 months, the medical fund pays a daily indemnity.

## Medical/Health Benefits

*Qualifying Conditions*

Whether occupied full- or part-time, disabled, unemployed or retired, all employees and workers alike as well as spouse and dependant children, orphans and disabled children, pregnant women, etc.: they all draw medical care benefits on the sole condition that they are affiliated to a social security medical fund and that the required contributions have been paid. These can be equal to zero in some cases, as for example for those who earn a minimum salary. There is a waiting period of six months, though in most cases it is not applied.

*Benefits*

Official rates are set in a convention negotiated annually between physicians, medical funds and the government within a budget frame. The benefits can be summarised as below:
- Reimbursement of 65-70% of fees based on agreed tariffs for current medical expenses by general practitioners and 60% of fees for specialised practitioners, dentists, therapists or nurses, etc.
- Reimbursement ranges from 20% to 100% for drugs according to their type; in hospital, the patient bears a flat amount per day.

## Work Injury Benefits

### *Qualifying Conditions*

All employers are legally required to provide occupational accident cover for their wage-earners. By this it is meant an accident incurred while employees are performing their work or are on their way to/from the work place. Though part of social security, the coverage needs to be insured with a private insurance company. If the employer has not fulfilled his obligation properly, the victim will be reimbursed by the Work Injury Fund. The latter also exercises supervision on the insurance companies.

### *Benefits*

<u>Short-Term Disability (maximum one year)</u>

Total disability: victims are entitled to 90% of gross salary up to a set ceiling.

Partial disability: the daily indemnity is equal to the difference between the salary before the accident and the diminished salary earned until complete recovery.

<u>Long-Term Disability (after one year)</u>

Total disability: the person receives a compensation allowance equal to 100% of annual salary up to the ceiling. Partial disability: the allowance is reduced in proportion to the degree of disability.

<u>Permanent Disability (after three years)</u>

During a 3-year period, the degree of disability is subject to review. Afterwards, the disability must be confirmed as permanent. A pension paid out until retirement age comes to replace the compensation allowance. Up to 33% of this pension can be converted into a lump sum. A pension lower than 10% of the annual salary is automatically converted into a lump sum. The pension is linked to the cost-of-living index.

<u>Survivor's Benefits</u>

Widow(er)'s pension: 30% of final salary up to the ceiling, paid out lifelong.

Orphan's pension: 15% (or 20% if orphan of father and mother) of final salary up to the ceiling, for each child under the age of 18 (with a maximum of 45% or 60% if orphan of father and mother); the orphan pension is granted until family allowances expire (at the latest at age 25).

<u>Funeral Indemnity</u>

Lump sum amounting to 30 days' salary

<u>Medical/Hospital Care</u>

The disabled person is entitled to full reimbursement of medical expenses incurred as a result of occupational accident.

If another person's assistance is required, an allowance can be granted. It is equal to twelve times the minimum monthly guaranteed salary.

Occupational Disease

Benefits are provided for, similar to those for occupational accident. They are also to be insured with specific insurance companies. Premiums and contributions are based on an annual salary ceiling.

## Unemployment Benefits

### *Qualifying Conditions*

For Full-Time Workers:

- If under age 36: 312 working days within a period of 18 months prior to unemployment
- From age 36 to 49: 468 working days within a period of 27 months prior to unemployment
- Age 50 or above: 624 working days within a period of 3 years prior to unemployment

Temporary allowances (waiting allowances) are granted to young people who have finished their studies and are unemployed. If they are under age 18 it will be granted for 155 days, if they are between 18 and 26, for 233 days, and if they are between 26 and 30, for 310 days.

### *Benefits*

The amount of benefits varies depending on the family situation of the unemployed persons:

- Cohabiting partner with dependants
- Single person
- Cohabiting partner

The benefit is calculated as a percentage of the last monthly gross salary (up to a ceiling) and after a certain period of unemployment, a flat amount per month is paid.

Older people who are fully unemployed and meet certain conditions (aged at least 50, 20 years of salaried service, unemployment for more than one year, etc.) are entitled to a monthly supplement of the unemployment benefit (seniority supplement).

Unemployment benefits are index-linked. They are normally subject to income tax, though many exceptions are granted.

## Other Benefits

### *Maternity Benefits*

Female wage-earners are entitled to take a 15-week leave starting before delivery. The pre-natal leave period starts at the earliest 6 weeks (at the latest 1 week) prior to the expected date of delivery. The post-natal leave period then covers the remaining 9 weeks or more.

The maternity benefit consists of a daily allowance equal to 82% of the gross salary (no ceiling applies). However, as of the 31st day, the allowance is reduced to 75% of the salary with a maximum daily allowance of EUR 98.70 (since April 2013).

Paternity leave was introduced for men, who are allowed to request social security benefits for a maximum of 7 days on top of the 3 days leave, paid for by the employer. The employee receives his normal salary during his first 3 days of absence. The following 7 days are paid by a paternity fee fixed at 82% of the gross salary (ceiling applies).

*Part time work and time credit*

The rules relating to time credit were changed during 2012. The regulation concerning time credit was modified by:

- CCT *(collective employment agreement)* no.103 of 27 June 2012 introducing a system of time credit and the reduction of working hours towards the end of the working life;
- The royal decree of 25 August 2012 amending the royal decree of 12 December 2001 implemented in execution of section IV of the Law of 10 August 2001 relating to the work-life balance in terms of the system of time credit, the reduction of working hours and the switch to part-time work.

A distinction is made between motivated time credit and non-motivated time credit.

a) Non-motivated time credit (Art. 3 of CCT no.103)

Employees can take time credit for a maximum period of 12 months. This period can be extended according to the different options for the reduction of working hours:

- if the employee decides to switch to part-time work, the maximum time credit period permitted is 24 months;
- if the employee decides to reduce his hours by 1/5, the maximum time credit permitted is 60 months.

However, in order to qualify for non-motivated time credit, the employee must meet 2 conditions (Art. 5 of CCT no.103):

- have worked for the current employer for at least 24 months;
- have worked as an employee for at least 5 years.

b) Motivated time credit (Art. 4 of CCT no.103)

The right to take time credit has been expanded by an additional time credit entitlement of 36 months. This is valid only for certain purposes stipulated in CCT no. 103:

- to take care of a child under the age of 8
- to provide palliative care
- to assist or provide care to a seriously ill member of the household or family
- to undergo training.

Time credit entitlement can also be extended to 48 months in the following cases:

- to provide care to a disabled child up to the age of 21
- to assist or provide care to a seriously ill minor child.

CCT no. 103 does, however, impose two limitations. On the one hand, time credit can only be taken if the company or sector has signed a CCT on the subject. And secondly, in order to benefit from 36 months' time credit, employees are not permitted to carry out any parallel employed or independent activity.

To qualify for motivated time credit, an employee must have worked for at least 2 years for his current employer.

<u>Time credit and end of career (Art. 8 CCT no. 103)</u>

The principle is as follows:

Employees aged 55 or over and who have worked for at least 25 years are permitted to claim a reduction in their working hours of 1/5 or to part-time.

However, this principle also provides the possibility of reducing working time from the age of 50 if the employee has carried out a strenuous type of work during 5 of the previous 10 years and during 7 of the previous 15 years, has carried out a type of work included on the list of trades marked by a skills shortage (to change to part-time) or who has had a career of at least 28 years (for the reduction of working hours by 1/5).

Generally, as regards the form in which time credit must be applied for, the employee has to notify his employee in writing:

- 3 months in advance if the employer has over 20 staff;
- 6 months in advance if the employer has fewer than 20 staff.

*Family Allowances*

The beneficiaries must be gainfully employed or in a specific social situation. Family allowances are paid until the child is self-supporting, and are guaranteed until age 18, at most until age 25 (if completing studies).

The amounts can be increased for each child depending on age, state of health, whether orphaned etc. Social aspects such as child of disabled, unemployed or retired parent are also taken into account. These benefits are paid 12 times per year. In addition, there are birth allowances for every child.

## Taxation

Employer and employee mandatory social security contributions are fully tax-deductible.

In principle, benefits paid by social security are taxable as professional income. However, special deductions apply when income consists mainly of state or private pensions. Furthermore, some benefits do not constitute taxable income (e.g. family allowances, health/medical care reimbursements etc.).

## Other Information

*Indexation*

Social security benefits, allowances, pensions in payment are linked to the Health Consumer Price Index. This index does not include price rises related to tobacco, petrol and spirits.

*Reciprocal Social Security Agreements*

Algeria, Australia, Bosnia-Herzegovina, Canada, Chile, Congo, Croatia, India, Israel, Japan, Korea (Republic), Macedonia, Morocco, the Philippines, Poland, San Marino, Slovenia, Switzerland, Tunisia, Turkey, the United States of America, Uruguay and the Member States of the European Union and the Economic European Area.

# IV PRIVATE BENEFIT PLANS

## Background Information

*Vandenbroucke Law*

The former Belgian minister of social affairs and pensions, Frank Vandenbroucke, issued this law in order to democratise supplementary pensions and to improve current regulations. The new law took long to prepare, as the extensive fiscal implications had to be carefully examined and taken into account. Dated April 28, 2003, the law has been effective since January 1, 2004.

The main features of the law are presented hereunder.

- *Industry-based* pension schemes are encouraged to develop: in a collective agreement rendered compulsory by royal decree, employers and employees negotiate on a par basis the basic pension benefits (normally a DC plan for retirement and death-in-career); they also choose the pension vehicle (group insurance or pension fund); they may also let employers opt out so as to select their own pension vehicle.
- *Solidarity* in pension schemes is to be increased: besides ordinary pension plans, the legislator wants to promote social plans with solidarity benefits (continued contribution payment in certain contingencies, death-in-career and full disability coverage, indexing running pensions, etc.); as a consequence, employers are relieved from the 4.4% tax on contributions, and the legal limit of pay-rise (known as “salary norm”) can be exceeded.
- Several types of pension schemes receive *official recognition*: in cafeteria plans, the affiliates are allowed to allocate their budget between a large range of risk coverage and saving vehicles, as far as a standard minimum benefit is provided for each risk; investment funds in insured schemes (branch 23) are said to pose no more problems, providing the employer guarantees a minimum return on pension reserves; cash balance plans are regulated as defined benefit schemes, although, in the event of severance, vested rights are to be calculated as in defined contribution plans.
- The employer must guarantee on all employee contributions a minimum return on pension reserves that is equal to the technical interest rate of insurance contracts (currently 3.25%); on employer contributions in DC plans and cash balance, the minimum return is 3.25%, though it is limited to inflation rate for the first five years; this guarantee applies in the following circumstances: severance, retirement and transfer of pension reserves. A project in the new Government Declaration is to restructure the now fixed nature of this guarantee and to make it adaptable to long term interest rates so as to make this a sustainable protection for employer’s.
- The new law wants to promote the payment of *pensions*: paying pension annuities shall always be made available; lump sum payments at retiring age are subject to a one time taxation of 16.5%; in the event of severance, pension reserves cannot be cashed before the age of 60; a provisional period is provided for until December 31, 2009.
- *Transparency* is to be improved: the information supplied by the insurer or pension fund comprises the drafting of an annual report (mainly about financial aspects), an annual benefit statement, an historical survey of reserves and of vested rights, the amount of pension annuities corresponding to lump sum for affiliates above 45 years, etc.
- Affiliates in severance will gain better control over pension reserves if they choose to move their accrued reserves into a specific scheme (*welcome structure*) set up either by the new employer or by the former one.

- Granting *individual pension promises* has become more difficult: a collective pension scheme for all personnel is a prerequisite; to avoid disguised termination indemnities, individual pension promises must not occur until 36 months before retirement; external funding is furthermore required, normally through an insurance policy; tax regulations are the same as those applying to collective pension schemes, but a limit to an annual contribution of EUR 2,230 on January 1, 2012 has been set; it is worth noting that tax on disability contributions is 9.25%.
- *Continuing the funding* of pension benefits in the event of severance is now possible: the employee has the right to require from his new employer that personal contributions should be withheld from his salary; the employee needs to have been affiliated to the former scheme for at least 42 months and the new employer has no scheme to offer; the employee is entitled to tax credit, the contribution amounting to a maximum of EUR 2,200 on January 1, 2012.
- *Level playing field* becomes the rule for all types of benefit schemes: collective and individual, ordinary and social, industry-based and employer-sponsored, group insurance and pension fund, etc.; in other words, the same rules apply in all cases with regard to prudential regulations (control of funding vehicles), social (protection of affiliates) as well as fiscal (contribution deductibility, taxation of benefits and contributions).

As from the early sixties, defined benefit plans have been a well-established feature in the Belgian supplementary pension landscape. Defined contributions were in most cases reduced to mere "top hat" schemes for executives. The most common retirement formula used to look like this:

$$\boxed{\text{PENSION} = (70\% \text{ final salary} - \text{legal pension}) \times d/40}$$

d = number of years of service.

The turn away from DB to DC plans came a good ten years ago, especially with the concern that welfare state benefits could no longer be maintained. The employer's pledge to pay out lifelong annuities also appeared too great a risk, especially as new mortality tables showed that funding costs for retirement pensions would increase (Royal Decree of December 17, 1992).

In 1996, the law Colla (the forerunner of the *Vandenbroucke law*) granted a higher protection to affiliates. But it also introduced much complexity in establishing employee's vested rights. The use of lower interest rates (usually 3.25% instead of 4.75%) meant calculating pension funding at a higher cost, unless the employer would turn to more equity to cover his pension liabilities.

Considering the difficulty to negotiate a downright switch from DB to DC, most employers tried to amend their pension plan: the retirement formula was duly changed into the promise of a lump sum; while still related to service, the pension benefit often contains but a mere reference to social security computation ceiling.

With the *Vandenbroucke law*, the switch to DC has become more difficult. The law confirms that accrued pension benefits must not be underfunded by insufficient pension reserves. From now onwards, when a plan is changed, the employer still has to fund the past service which remains based on the original pension formula. When considering a new pension plan, the pension organiser (either an employer or a representative committee for a whole sector) now invariably chooses a defined contribution plan.

The *Vandenbroucke law* has put an end to a ten year long controversy on the tax-deductibility of premiums in investment funds (branch 23). The employer has to guarantee a minimum return on pension reserves of 3.25% on both employer contributions and employee contributions.

To satisfy increasingly individual expectations of employees, cafeteria plans are now recognised officially. The legislator, nonetheless, makes a "standard significant coverage" compulsory for every risk (death-in-career, disability etc.). The law also abolishes all discrimination between affiliates, especially as regards medical selection.

Companies are now looking for simpler plans with transparent financing methods and safe investment strategies. Employers can be expected to raise the return of the plan by improved employee communication. They will try to demonstrate how advantageous it is to have a pension plan. Thus, all employees should know how they are going to meet the prospect of failing social security benefits.

### *The "Salary Norm"*

Every two years, social partners meet to negotiate the maximum rate of labour cost increase. If they fail to come to an agreement, the government takes the decision. The aim is to ensure that Belgian employers remain competitive with their major commercial partners (Germany, France and the Netherlands). The decision becomes the legal limit for pay rises and will remain in force for two years ("salary norm").

Pension managers shall normally take the "salary norm" into account when considering a pension scheme, unless solidarity benefits are provided for in conjunction with the usual pension benefits. Yet, with years passing, the "salary norm" has become purely indicative and it scarcely represents an obstacle to concluding a pension scheme.

## Eligibility

All salaried employees must be admitted to the pension plan as soon as they belong to a category described in the pension rules. A waiting period is possible but cannot be extended past the 25th birthday. Discrimination cannot be made on the basis of age, sex, employment (full- or part-time). All criteria must be "objective and reasonably justified", as well as in proportion to the aim pursued. The vesting period cannot exceed one year.

The affiliation cannot depend on the result of a medical examination. However, medical formalities may be requested in one of the following cases:

(a) The affiliate is free to choose the extent of death coverage

(b) Death coverage exceeds the retirement benefit by at least 50%

(c) The plan counts less than ten affiliates.

With the *Vandenbroucke law*, industry-based pension plans have received a legal frame. Such plans are developed and are about to be implemented. They mainly concern blue collar workers.

### Contributions

Usually, the employee contribution is a percentage of the annual salary, i.e. from 2 % to 6 % up to the social security computation ceiling, and from 5% to 10 % of the excess. The employee contribution, however, is increasingly being suppressed. This is especially the case when a defined benefit plan is under revision. Since January 1, 1993, tax-deductibility has been replaced by a less efficient tax reduction. Also, the *Vandenbroucke law* compels the employer to guarantee a 3.75% rate of return on 100% of the value of employee contributions. This should accelerate the trend towards abolishing employee contributions. In the cases where employee contributions prevail, the employer's contribution is normally a multiple of the employees' contribution. In most cases the employer's contribution is 2, 3 or 4 times the employee's contribution. It must be emphasised however that there is no mandatory rule to be followed in this respect.

*New Special social security contributions for supplementary pensions (also known as 'Wijninckx contribution')*

The Programme Law of 22nd June 2012 introduced a special social security contribution of 1.5% to be paid on contributions used to build up supplementary pensions. The so-called 'Wijninckx contribution' was developed further in the Programme Law of 27th December 2012 (B.O.J. 31/12/2012). The introduction of this contribution is in two phases: from 1st January 2012 to 31st December 2015, a transitional scheme applies that will be followed by a permanent scheme from 1st January 2016.

Transition period:

- From 2012, employers are obliged to pay a contribution of 1.5% 'for every employee' and companies 'for every self-employed company manager' as the premiums for the supplementary pension of this employee or self-employed company manager exceed an annual (indexed) threshold of 30,000 EUR.
- In more practical terms, the threshold is adjusted to the sum of (1) the amounts allocated to the individual account of the pension scheme member for pension commitments of the types defined contributions, defined benefits managed via individual agreements or cash balance; (2) the amount of the increase in the (acquired) reserves of a pension scheme member for pension commitments of the type defined benefits not managed via individual agreements, and (3) the amount of the premium(s) for death cover not funded by amounts allocated to the account or by the increase in the acquired reserve.
- For employees, this sum includes the amounts funded both by the employer and by the employee. However, the Wijninckx contribution is only owed on the part that exceeds the threshold and then only on the employer's share. The sum for self-employed workers only relates to the funding by the company. Here again, the contribution is only owed on the part that exceeds the threshold.
- The Wijninckx contribution must be paid by employers to the NSSO (via the DMFA declaration) in the fourth quarter of every year of contribution and for the first time in 2012. Companies must pay the contribution to the NISSE at the latest by 31st December of each contribution year.

Permanent scheme:

- The permanent scheme comes into effect on 1st January 2016. The Wijninckx contribution of 1.5% is then owed if the amount of the statutory pension and the supplementary pension for a particular year exceeds what is known as the 'pension target'. This target is equal to the maximum civil service pension (currently 6,160 EUR per month) multiplied by the career break. Other than during the transitional scheme, this contribution is now owed on the total of all employer contributions (i.e. the total share of the employer in the amount of the increase in the acquired reserves).

## Retirement Benefits

### *Retirement Age*

The *Vandenbroucke law* does not state a retirement age for supplementary pension plans.

Yet, according to the law, a benefit can be paid out only in three circumstances:

- When the beneficiary dies
- When the beneficiary reaches the term age set in the pension rules
- When the beneficiary retires and claims for social security pension

Furthermore, the law sets an absolute age limit: any benefit must not be cashed before the age of 60.

As a consequence, no surrender value can be paid in the event of severance. However, the law provides for a provisional period till December 31st, 2009 and offers greater facilities for departing employees to house their pension reserves (welcome structure). They can thus allocate their reserves to various risk coverage and investment strategies.

Until a few years ago, the trend was to lower retirement age from 65 to 60. It seems that the trend is now being reversed. Increasingly plans feature a term age of 65, both for males and females. According to the plan rules, early retirement as from 60 remains possible.

### *Benefits from Defined Benefit (DB) Plans*

<u>Old Age Pension</u>

When employers revised their plans which provided a lifelong retirement pension, they mostly turned to a two-tier pension formula such as, for example:

| |
|---|
| PENSION = 15- 25% pensionable salary up to computation ceiling +<br>50% to 80% of the exceeding salary x d/40 |

d = number of years of service
computation ceiling = social security benefit ceiling

Or else

| |
|---|
| PENSION = 0.375%- 0.625% pensionable salary up to computation ceiling +<br>1.25% to 2% of the excess x years of service |

The previous formula looked as follows:

| |
|---|
| PENSION = 70% final salary – legal pension x d/40 |

The pensionable salary is usually the average of the last 3 or 5 annual salaries (in some cases, the best 3 or 5 annual salaries out of the last 5 or 10 years). The annual salary is generally fixed at 12, 13 or 13.92 times the gross monthly salary (0.92 times monthly salary being the holiday allowance). The pensionable service (= d) consists of years and months, usually counted from the date of entry into service.

The advantage of the step-rated formula is that it removes any danger of offsetting a social security pension that is assumed to decrease for future pensioners.

A number of plans still providing for an old age pension were revised to use a fictitious but fixed conversion factor (e.g. 12). In effect, this transforms true old age pensions into lump sums.

Retirement Lump Sum

Most recent plans (or revised ones) now provide for a retirement lump sum, based on the following formula:

| |
|---|
| LUMP SUM = 1.5 to 2.5 x pensionable salary up to computation ceiling +<br>from 3 to 8 times the exceeding salary x d/40 |

If beneficiaries wish to receive a pension, the pension payments will be computed with the conversion rate in force on retirement.

In this formula as well as in those above, the rules can either refer to the social security computation ceiling or, more conveniently, to a mere flat amount, which is no way linked to social security.

### *Benefits from Defined Contribution (DC) Plans*

Level of Contribution

The percentage is usually expressed as a percentage of the gross annual salary (though a flat premium is also possible). In order to coordinate the plan with social security, the percentage can significantly exceed the social security computation ceiling.

| |
|---|
| CONTRIBUTION = 2 to 8 % pensionable salary up to computation ceiling +<br>from 6 % to 18% of the exceeding salary |

More and more plans are using step rated contributions linked to the number of years of service (increasing rates for increasing service)

Service-related step rate contributions:

- 0-5 yrs: 2% salary up to ceiling plus 4% above ceiling
- 5-10 yrs: 4% salary up to ceiling plus 8% above ceiling
- 10-20 yrs: 6% salary up to ceiling plus 12% above ceiling
- >20 yrs: 8% salary up to ceiling plus 16% above ceiling

Very often the plan is contributory: part of the contributions are paid by the employee, most commonly is a ratio of ¾ paid by employer and ¼ paid by employee.

Additionally, the contribution rates can be age-related, in which case the contribution rate for one year of age difference cannot exceed more than 4% the rate for the previous year.

Employee contributions to a plan are often half of the contributions by the employer.

In older plans, the defined contribution used to be linked to an endowment insurance policy. The affiliate was covered simultaneously by a term-life insurance and a pure endowment contract. The proportion could range from a 10/5, 10/10, 10/15 ... up to a 10/30 combination, i.e. the insurer pledges, in the event of death, to pay a lump sum equal to twice the amount in the event of survival, or the same amount in either event, etc.

The combination was originally based on the family situation, with more risk coverage (term-life) for those with family responsibilities. As mentalities changed, it became customary to let the affiliate choose the combination. In some cases, the contribution was solely made to a pure endowment contract. At the same time, in the event of death (see further death benefits), a defined lump sum was insured with a one year term-life. The final step was taken when mutual funds were offered to affiliates for the investment of their contributions.

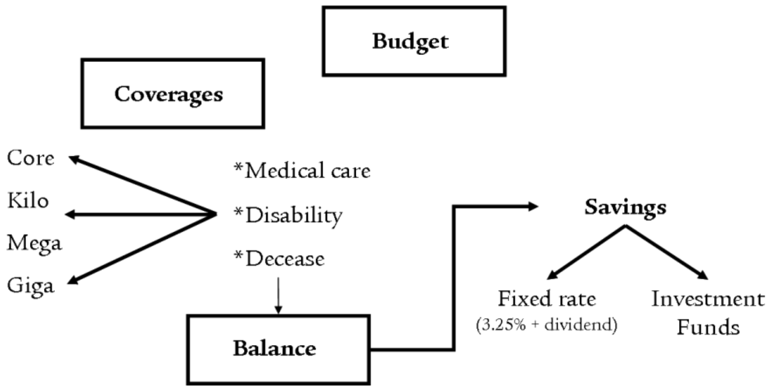
Many of these classic plans are remaining in force with employers. In companies with but a handful of wage-earners, such a defined contribution plan is still popular, as it is simple and transparent, convenient to budget for and easy to communicate.

As stated before, there is a tendency to convert defined benefit plans into defined contribution plans. Depending on the level of contributions and on the return granted on reserves, the final benefit can be (significantly) lower than the one attainable under a defined benefit plan. With the *Vandenbroucke law*, one has to recall that the benefit related to past service still needs to be funded according to the former defined benefit formula. Thus, past service premium will necessarily have to be paid with every annual salary increase. This is referred to as the “dynamic accrual management clause”.

Cafeteria Plan

In a cafeteria plan, affiliates allocate their available budget between various risk coverage. They must also determine the range of coverage (between a minimum and a maximum). The remaining premium then goes into a savings plan, in which affiliates will bear a degree of risk for their investment (fixed or variable interest rate).

Such a cafeteria plan in Belgium can look as follows:




Cash Balance Plan

Starting from the legal definition, a cash balance plan is said to provide for a defined benefit that results from virtual payments capitalising at a definite interest rate (fixed percentage, long-term bonds etc.). For example, an employer could promise a retirement lump sum equal to the future value of 3% of every annual salary while enjoying an interest rate of 5%.

Such a plan is ideally suited to be funded according to the principles of unallocated funding. Based on an actuarial valuation, payments are made into a financing fund set up with an insurance company (group insurance). According to the investment strategy and the return achieved on assets, employers can expect to optimise the cost of their pension scheme, while the employee can, on average, be granted a higher return than under an insured plan in which one is granted a basic interest rate guarantee (currently around 2.75%-3.25%) increased by local dividends (running between 0% to 1%).

Although cash balance plans offer funding flexibility to the employer, one must keep in mind that in the event of severance, vested rights are to be calculated as in defined contribution plans. As a consequence, a minimum rate of 3.25% must be guaranteed on the accrued pension rights.

However as fixed income returns (branch 21 also) are being lowered (to 1.5% for new premium (increases) as from 1 st January 2015) at an increasingly rapid pace employers are increasingly looking at other asset classes (in a search for return) to fund their pension liabilities. Hence through following the so-called Prudent Man principle they come to accept a calculated risk ( or volatility) of their pension assets in the knowledge that in the long run the risk pick-up is likely to translate into higher returns as they get a risk premium on top of the risk free interest rate.

*Vesting*

Vesting can be deferred at most by one year from enrolment in the plan. Full vesting of the employer and employee accrued benefits takes place, even in cases of dismissal without notice or dismissal on serious grounds.

## Disability Benefits

It is customary to include the coverage of disability and medical care in an employee benefit scheme. In this regard, it makes little difference whether they are integrated in a defined benefit or a defined contribution plan for retirement and death-in-career. Waiver of risk and savings premiums is also generally provided.

*Benefits*

In the event of illness or of a non-occupational accident, the disability pension is usually fixed as a percentage (10% to 20%) of the annual salary up to the social security ceiling, plus a percentage (70% to 80%) of the salary in excess.

In the event of an occupational accident, the disability pension is fixed as a percentage (70% to 80%) of the annual salary exceeding the social security ceiling.

The idea is, by the addition of both social security and benefits, to provide a replacement ratio (upon choice by the employer) between 60% to 80% of gross annual salary.

Offset: employers are increasingly introducing "offset" disability benefits these days. In the offset disability plan the employer sets the replacement ratio (example 75% of annual gross salary) as a target (or defined benefit). The complement paid by the insurance company is then hence always adjusted (as a function of changes in the social security intervention over time or due to changes in family status) so as to exactly equal the sum of both social security and disability benefit up to a total of the defined replacement ratio.

The payment of benefits depends on the degree of earning disability:

- Under 25%: no benefits are paid
- Between 25% and 67%: benefits are paid in proportion to the degree of disability
- Over 67%: 100% of benefits are paid

The pension in course of payment can be linked to the consumer price index or increased by a flat rate (ranging from 1% to 5%). As the first month of incapacity must be paid in full by the employer, the minimum waiting period is 30 days. It can also be fixed at 60, 90 and up to 3 years.

### Death Benefits

- Widow's and Widower's Pension: Fewer plans provide for widow's/widower's pension calculated as a percentage (e.g. 40%) of annual salary, including an assumption of the state survivors' benefits or as a percentage of the projected old age pension (e.g. 60%). The lump sum value of the widow's/widower's pension is usually at least 1 or 2 times the annual salary.
- Orphan's Pension: The orphan's pension may be expressed as a percentage of the projected old age pension (e.g. 10% to 20%) or as a percentage of annual salary (e.g. 5%). Sometimes a minimum orphan's pension is provided. An orphan's pension is payable as long as the child is financially dependent and benefits from a family allowance. The orphan's pension is doubled for full orphans. Usually, this coverage applies to all beneficiaries with children, irrespective of their marital status.
- Lump Sum Death Benefit: The following coverage is often used, either in a defined benefit or defined contribution plan:
- 1 x annual base salary for single participants,
- 2 x annual base salary for married participants,
- 0.5x annual base salary for each dependant child.

However, it is generally accepted that insured death benefits as described above are too low and should rather be around three to five times the annual salary for married or cohabiting partner participants in order to yield a replacement income roughly equivalent to that of a widow(er)'s pension.

### Medical/Health Benefits

Health care insurance provided under group schemes is almost exclusively restricted to hospitalisation and hospital-related medical care. There are two types of coverage as outlined below.

A coverage with a ceiling of EUR 25,000 (optional EUR 50,000) is provided for, in the event of hospitalisation (including maternity), pre- and post-hospitalisation as well as out-patient care in the event of critical illness. However the ceiling for refunding a specific item or expense can be expressed as a numerical ceiling (varying between EUR 0 and EUR 1,250). The deduction may range between EUR 0 and EUR 250. The specific amount is at the discretion of the plan sponsor. The pre- and post-hospitalisation period commonly extends from three months prior to, and six months following hospitalisation. During this period expenses linked to out-patient expenses in connection with the medical reason for hospitalisation are covered.

The amount of the tariffs, the deductibles and the maximum ceiling for reimbursement varies in accordance with the consumer price index.

Additional coverage for palliative care may be provided for. The critical illness coverage includes 33 critical illnesses and palliative care is covered even if provided at home. Also included are coverage for assistance while abroad and repatriation to Belgium, as well as a third-party settlement system (while hospitalised abroad) and an info-line. Third-party payment system for hospitalisation in Belgium has become the rule and is provided under the form of an electronic card (medical chip card). Other types of coverage do exist such as: daily indemnity (in the event of hospitalisation), waiting period for social security benefit, dental and optical care. Usually they are only available in connection with a main healthcare plan.

### Other Benefits

*Additional Benefit Plans for Executives*

A “Top Hat” scheme is often supplied to supplement the basic pension plan for key executives. It is designed to provide higher or more comprehensive risk coverage and pension funding.

For this category of staff, a savings plan can also be found, i.e. a defined contribution plan with various investment facilities.

Special plans (such as Bonus plans) have lately been developed in order to provide highly paid executives with benefits based on tax-deductible and tax-efficient premium payments, invested in products with a high expected return. As the employer has to guarantee a 3.25% annual return, most employers tend to reduce the risk level of the proposed investment funds or even to abolish the possibility of making any investment choices at all.

### *Individual Pension Promise*

Until recently, individual pension arrangements could be set up in a so-called “key-man” life insurance, coupled with an individual pension promise. The granting of an additional pension lump sum was often used to ease departure of ageing staff members. Although such existing pension promises may still be preserved, the *Vandenbroucke law* has imposed drastic conditions on the granting of new individualised retirement benefits.

First of all, the member of staff must be affiliated to the employer’s collective pension scheme in force for all personnel (with the sole exceptions of student employees and interim workers). Secondly, bearing in mind Belgium’s particularly low employment rate for those between 55 and 65 years, the individual pension promise cannot be granted to the beneficiary after the 36th month preceding the date of effectively stopping professional activity whether that is because of retirement or because of severance. The main reason for this condition is to avoid the individual pension promise being used as a means of facilitating early retirement or cheaper severance settlement of the employee.

The maximum employer contribution is EUR 2,230 since January 1, 2013.

The new law aims to bring about the same legal protection to affiliates of an individual pension promise and of a collective pension plan. Thus, the pension reserve must be outsourced to an insurance company (or a pension fund). The affiliate is entitled to vested rights at the latest after one year; the employer must guarantee a minimum interest rate on reserves etc.

The existing key person life insurance cannot be converted and brought in line with the new legal concept (normally an individual policy, in which the affiliate is the direct beneficiary of the benefits). If internal pension provisions have been constituted, they can be transferred into such an individual policy.

## Taxation

### *Tax on Contributions*

Contributions to retirement, death and disability benefits are taxed at 4.4%, and contributions to premiums for medical care at 9.25%. Social plans (i.e. providing for solidarity benefits) are exempt from this tax (the equivalent amount of 4.4% of contributions must then be used to fund so-called “solidarity benefits” instead, e.g. continuation of premium payment in case of temporary technical unemployment or during extended maternity leave). If a disability benefit is insured in an individual pension promise the taxes on the premiums amount to 9.25%.

A social security contribution of 8.86% is also due on employer contributions to retirement and death benefits, and a social contribution of 10% is due on medical care insurance premiums.

The tax burden on group insurance premiums is thus much lower than the 35% social contributions (approx.) on salary. Besides, employer contributions are not considered as taxable income for the affiliate.

The tax amount that can be saved by the employer by choosing a group insurance benefits instead of a salary increase is highly significant; it can amount to as much as 22%. For employees the benefit is even more important when being granted an "employer's" group insurance premium: they do not have to pay the social security contribution of 13.07% on the gross salary and completely avoid the marginal tax rate of 40%-50% on the upper increment of gross salary. Hence employees can save between 50%-65% of income tax and social security contributions compared to being paid a gross salary.

The temptation of indirect funding for the employee can exist (i.e. premiums paid by employer in lieu of a portion of salary, e.g. 13th month or bonus). In general care should be taken not to replace existing compensation (on which social security contributions are due) by premiums for a top hat scheme or other pension scheme benefits. Such a plan can however be introduced instead of a salary increase without any problem when a new element of compensation is put into place (or simply for any element of compensation except for the compensation elements as foreseen by law or by collective labour agreement. Salary sacrifice strategies should be considered only under supervision of a legal counsel.

### *Deductibility of Contributions*

Employer contributions to private benefit plans are tax-deductible, provided that they are covered by an insurance company or a pension fund located in the EEC. The following requirements are to be complied with:
- Death-in-career benefits: premiums are fully tax-deductible;
- Retirement benefits are not to exceed 80% coverage of the final gross annual salary, reckoning on 40 years of service; social security pension is integrated at an estimated 50% of the annual salary (up to social security computation ceiling); rates are provided to convert lump sums into lifelong pensions; the pension may be indexed by maximum 2%; a reversion of no more than 80% can be insured in favour of the surviving spouse;
- Disability pensions are not to exceed 100% coverage of the gross annual salary, social security benefits included; this limit has been applied since January 1, 2004, when the *Vandenbroucke law* came into effect;
- Medical care premiums are never tax-deductible.
- Complying with filing information to the DB2P database is also becoming a condition for tax deductibility of contributions

Employee contributions may be subject to a tax reduction for death-in-career and retirement benefits, provided that they are withheld directly from the salary. The tax reduction is brought to 30% since 1st January 2012 (used to range from 30% to 40% and was based on the average tax rate of the employee before that date).

### *Taxation on Benefits*

Social Security Contribution: In the event of retirement or death-in-career a social security contribution of 3.55% is levied by the insurer or pension fund on the total benefit.

Furthermore a progressive solidarity contribution is withheld: the contribution ranges between 0% and 2%, depending on the amount of retirement lump sums, respectively death lump sums.

### *Income Tax*

All private plan pensions (i.e. all kinds of annuities paid out at retirement, death, disability etc.) are treated as ordinary income. Consequently, they are subject to progressive tax rates (up to 50%, but enjoying a small tax reduction). On the contrary, lump sums are taxed separately at a flat rate of 16.5% and 10% (on the employer and employee parts respectively), both in case of life or of death.

Thanks to the pact of solidarity between generations, the retirement lump sum will be taxed at the rate of 10% instead of 16.5%. The beneficiary will nonetheless have to prove an effective professional activity up to the age of 65.

In order to promote the taking out of pensions, the *Vandenbroucke law* introduced a tax-favourable treatment of annuities. So, the benefit is taxed separately on the corresponding lump sum as described in the former paragraph. Each year the pension amount is then subject to a 15% tax calculated on a flat interest rate of 3% of the lump sum.

Lump sums or surrender value can still be paid out to the beneficiary and enjoy the favourable separate taxation, provided that it takes place within the 5 years preceding the retirement age set in the plan rules. This fiscal facility disappeared with the provisional period of the *Vandenbroucke law,* ended on December 31, 2009.

In group insurance, the benefit is normally twofold: a contractual part funded by premiums and a part funded by the insurance company's profit sharing. The latter benefit is exempt from taxation; it remains nevertheless subject to social security contributions (3.55% and solidarity).

Lump sums from group insurance can also be taxed each year based on a theoretical annuity and depending on the beneficiary's age at the time of the settlement. It lies between 1% of the lump sum for age 40 or below and 5% at age 65. This fiscal regime applies in the following circumstances:

- The group insurance is used to cover a mortgage loan
- A loan on policy has been granted and is still to be reimbursed
- It applies only on the first slice of EUR 73.19
- The pact of solidarity between generations requires that only 80% of the theoretical annuity should to be subject to marginal taxation

Finally, tax on benefits is to be increased by the local community tax. It can range from 0% to 10%. On average, it is 7%.

### *Changes to the tax regime for payments on supplementary pensions as from 2013*

The programme law of 22nd June 2012 introduced new tax rates that apply to second pillar capital built up by employer contributions or premiums paid by the company in the event of life. However, in the event of death, the tax rate remains at 16.5%.

The current system provides for a final tax rate of 16.5% on payment from age 60 and 10% if the pension scheme member remains effectively employed until the age of 65. The new system applies the following tax rates: 20, 21% at age 60, 18, 19 % at 61, 16.5% at 62 to 64 and 10% at 65 if the pension scheme member remains effectively employed until the age of 65. The rates apply since 1st July 2013.

Although the actual wording of the law is not clear at the moment, the Pensions Minister has confirmed that the rate of 16.5% can also be applied before the age of 62 if the life benefit is paid out as the result of taking statutory retirement. In other words, the tax rate at age 60 and 61 remains 16.5% on condition that the individual does actually take statutory retirement at that age.

### *Inheritance Tax*

When benefits are paid in the event of death of the affiliate, no succession duties are due provided that the following conditions are fulfilled:

- The deceased was a staff member under an employment contract
- The beneficiary of the benefit is the wedded partner or a child less than 21 years old
- The benefit issues from a collective pension scheme; for an individual pension promise, succession duties are invariably due

*Transfer of Built-Up Policy Reserves Abroad*

The view generally taken is that there is no tax liability. However, according to the law of December 28, 1992, the allocation of lump sums, surrender and savings values to a taxpayer who has previously changed residence from Belgium to another country is assumed to have taken place the day before the change of domicile. Hence the normal tax rates of 16.5% and of 10% do apply.

If beneficiaries can proof that the benefit is subject to tax in their new country of residence, they can be exempted from paying Belgian taxes.

*Benefit Payments from Abroad*

Pensions, lump sums and surrender values that are paid out or transferred from abroad are treated as taxable income to the same extent as pensions accrued in Belgium. They are subject to double taxation agreements, though.

*Double Taxation Agreements*

Albania, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, China, Chinese Taipei, Congo, Croatia, Cyprus, the Czech Republic, Denmark, Ecuador, Egypt, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Gabon, Georgia, Germany, Ghana, Greece, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Ivory Coast, Japan, Kazakhstan, Korea (Republic), Kosovo, Kuwait, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Macao, Malaysia, Malta, Mauritius, Mexico, Moldova, Mongolia, Montenegro, Morocco, the Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, the Philippines, Poland, Portugal, Qatar, Romania, the Russian Federation, Rwanda, San Marino, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, the United Arab Emirates, the United Kingdom, the United States of America, Uruguay, Uzbekistan, Venezuela and Vietnam.

## Other Information

*Funding Vehicles and Strategy*

Besides designing the pension plan, employers must make their decisions with regard to the funding of the benefits.

This concerns:
- The funding vehicle: group insurance vs. pension fund
- The funding method: allocated or unallocated
- The investment strategy: insurance with fixed interest rates vs. separate account with active asset management

### *Group Insurance*

It is based on allocated funding with guaranteed rates and local dividends (branch 21). The administration of premiums, benefits and reserves happens through individually allocated contracts. Funding through a separate account can be provided in order to offer higher global returns on underlying pension assets. Unit-linked funds in branch 23, i.e. mutual funds managed by insurance companies, are also available with various investment strategies.

Tariff rates are determined by the application of minimum technical bases:
- Mortality tables MK/FK for life coverage ; MR/FR for retirement, widow's/widower's pension
- Technical interest rate: 1.5% (*)
- Loading: type and amortisation are regulated

(*) Most companies use a technical rate between 0.8% and 2.25%; administrative loadings range from 0.75% to 4.5% (applied to premiums at the moment they are paid to the insurer). So-called inventory loadings change the "total" return on reserves (e.g. a guaranteed return of 3.2% with inventory loading of 0.1% actually corresponds to a real return of 3.0%).

Insurance companies provide dividends or profit-sharing such as:
- Interest dividend, resulting from the difference between the return on investments and the tariff interest rate
- Risk dividend, resulting from the difference between the actual death claims and the expected claims derived from the mortality table

For defined benefit plans, the dividend from the employer contribution can be refunded to reduce the cost. Old age pension, widow's/widower's pension and orphan's pension in the course of payment are also granted a dividend in the form of an annual increase of the annuity. No dividends are paid on disability and medical care benefits.

### *Pension Fund*

A self-administered pension fund remains an alternative to group insurance. The pension fund needs to be a legal entity separate from the company. Administration and follow-up are carried out by external consultants, actuaries and staff. To be cost effective, the high overheads of this solution have to be offset by a high number of employees (500 or more).

### *Funding Methods*

<u>Allocated Funding</u>

In group insurance, the old age pension is funded through annual premiums for pure endowment contracts. Death-in-career coverage is funded through a one year term life insurance. Pension and life insurers are subject to a control "a posteriori". They enjoy a greater freedom when calculating their tariffs and designing their solutions, the control focusing on solvency and profitability.

In defined contribution plans, affiliates can be offered mutual funds, in which they decide to pay part or all of their employer and/or employee contributions. Their share in the fund is represented by units which fluctuate with the assets of the fund. Normally once a year affiliates can alter their own investment strategy and switch part or all of their reserves.

Unallocated Funding (Defined Benefit Plans)

Contributions necessary to finance the benefits are calculated on an overall basis for all affiliates. Pension rights are embodied in one global reserve. When an affiliate is entitled to a benefit, an individual calculation is made and the benefit is paid out from the fund to the beneficiary.

The customary actuarial cost methods are available, ranging from unit credit (minimum funding), projected unit credit (with a projected salary), to aggregate cost (combining both a projected salary and a complete career).

According to the method chosen and the selected hypotheses, the employer enjoys greater flexibility and better control of cost increases (resulting from pay rise, fluctuating returns etc.). The employer can then level them out as an even percentage of the payroll. Administration charges are lower than in allocated funding, especially if the right proportion between investment volume and fixed costs is reached.

Once determined, the contribution goes into a separate fund. The legal concept in Belgium is the financing fund. A fixed yield can be guaranteed for a specified duration on the assets of the fund (branch 21). Otherwise, the fund can consist of assets chosen in agreement with the employer. According to the investment strategy, the fund manager will then aim at an expected return (branch 23).