Taxation manual for life insurance and pension plans

PlusUltra Seguros

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PlusUltra Seguros

1. Purpose

The purpose of this manual is to provide a summary on the taxation rules applicable to: Life Insurance and Pension Plans.

This document is exclusively intended for internal training purposes. No judgements or opinions may be drawn from the comments included in it implying any responsibility whatsoever on the part of Plus Ultra Seguros Generales y Vida, S.A. de Seguros y Reaseguros, Sociedad Unipersonal, towards third parties, Organisations or official and private institutions.

This manual has been drawn up based on the tax regulations in force for “common territory” as at 31 October 2015.

If it were necessary to adapt any aspects to Autonomous Regional Tax Regulations (Navarre and Basque Country), a request should be made to the Company's Taxation Division.

2. Effect

Immediate after its publication.

3. Scope

This manual applies to the whole Company, especially to people with responsibilities in the areas of Life insurance and Pensions:

.- Contracting
.- Benefits
.- Insurance mediation

4. Taxation of Life Insurance and Pension Plans

4.1.- Individual Life-Risk Insurance policies

4.2.- Individual Life-Savings Insurance policies

4.3.- Individual Systematic Savings Plans “ISPs”

4.4.- Capital gains exempt from taxation in cases of reinvestment

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4.6.- Life Insurance policies that generate earned income

4.7.- Pension Plans and Guaranteed Pension Plans (GPP)

4.1.- INDIVIDUAL LIFE "RISK" INSURANCE POLICIES

In this section we pay particular attention to individual life insurance policies that do not generate any earned income, i.e. those that are not set up as social welfare instruments serving as alternatives to those provided by the public pensions system.

The first question we must consider is whether or not the benefits derived from these coverages will be taxed under Personal Income Tax (PIT) or under Inheritance and Donations Tax (IDT).

To answer this question we must address the response according to how the benefit is received.

A) BENEFITS RECEIVED IN THE FORM OF CAPITAL:

- Policyholder = Beneficiary	PIT
- Policyholder ≠ Beneficiary	IDT

B) BENEFITS RECEIVED IN THE FORM OF INCOME:

- Policyholder = Beneficiary	PIT
- Policyholder ≠ Beneficiary	IDT (causa mortis acquisitions)
- Policyholder ≠ Beneficiary	IDT (inter vivos acquisitions/Constitution)
- Policyholder ≠ Beneficiary	PIT (inter vivos acquisitions/collection of income)

Let's look at the taxation rules applicable to the payment of benefits resulting from the guarantee of:

DEATH:

Generally speaking, where the policyholder and beneficiary are different people, the benefits will be taxed under IDT (inheritance) and should be added to the corresponding estate (which it is not part of).

The Inheritance and Donations Tax will be settled mostly according to the following principles.

a) It must be paid in the Autonomous Community region where the person giving rise to the taxation lived

b) The payment period may not exceed six months from the date of death

c) If the benefits are paid in the form of capital, the amount received will be included in the Taxable Base amount subject to the tax.

d) If the benefits are in the form of income, the present actuarial value of the incomes to be received, according to the conditions of the insurance contract, should be included in the Taxable Base amount.

e) The amount to be paid will essentially depend on which Autonomous Community region the tax is paid in, the amount of the benefits, what family relationship the person has to the individual giving rise to the taxation, the existence of any deductions, the approved tax rates and any discounts that exist on the amount to be paid.

SURVIVAL

If the policyholder and beneficiary are different people:

Any benefits that the beneficiary receives due to surviving after the policyholder's death or due to the death of an insured person other than the policyholder, are subject to IDT as a legal trade free of charge and inter vivos equivalent to a donation.

If the policyholder and beneficiary are the same person:

The returns generated in the benefits will be subject to Personal Income Tax as part of the capital gains of the recipient, hence they will be included within their Taxable Savings Income balance.

NOTE: As set out in article 7.d) of the Personal Income Tax Act:

Compensation payments for personal damages from accident insurance contracts shall be exempt, except for in the case of insurance contracts whose premiums have reduced the policyholder's taxable income base or are considered a deductible expense due to the application of the 1st rule of section 2 of article 30 of this Act (*amounts paid into virtue of insurance contracts, taken out with social security mutual*

societies by professionals that are not included in the special Social Security scheme for self-employed workers, when, for the purpose of fulfilling the obligation set out in the fifteenth additional condition of Act 30/1995 of 8 November regarding the regulation and supervision of private insurance, they act as alternatives to the aforementioned special Social Security scheme, in the portion that is set aside to cover the contingencies dealt with by that special scheme, with the limit of the maximum fee for common contingencies that is established in the aforementioned special scheme in each financial year). This exemption shall apply up to the amount resulting from applying for the loss incurred the system for valuing damages and losses caused to people in road accidents, which was included as an appendix to the revised text of the Motor Vehicles Civil Liability and Safety Act, approved by Legislative Royal Decree 8/2004 of 29 October.

Based on the restrictive application status assigned to it by the Directorate-General of Taxes, the above exemption does not apply to life insurance policies that include accident coverage.

LIFE INSURANCE POLICIES FOR THE REPAYMENT OF MORTGAGE LOANS

TAXATION OF THE PREMIUM:

Deductions for the purchase of one's principle residence (taxpayers that have purchased their principle residence prior to 1 January 2013).

When taking out the insurance is included as one of the lender's conditions (DGT Consultation 0546-04), and provided that all the legal and regulatory requirements are met, the amounts paid for these insurance premiums shall form part of the deduction for investment in a principle residence.

TAXATION OF THE BENEFITS

The income payments derived from the benefits for the contingency of disability covered in an insurance policy, when it is received by the taxpayer's mortgage creditor as the insurance policy's beneficiary with the obligation of fully or partially paying off the taxpayer's mortgage debt, shall be given the same tax treatment as would have applied if the beneficiary had been the taxpayer themselves. However, tax may never be withheld from these income payments.

For these purposes, the mortgage creditor should be a credit institution or another entity which, in a professional manner, grants loans or mortgages.

NOTE: For cases of benefit payments derived from life insurance policies taken out mandatorily to provide coverage to loans with personal guarantee, the portion of the capital upon death that must be repaid to the lending company will be classified as a capital gain and will not be subject to any tax withholding.

4.2.- "SAVINGS / INVESTMENT" LIFE INSURANCE POLICIES

1.- WHAT DO WE UNDERSTAND BY SAVINGS/INVESTMENT LIFE INSURANCE POLICIES?

Life insurance policies in the savings and investment formats usually coincide with the insurance policies referred to as "Mixed", combining the guarantees of survival, death and disability. They are an effective instrument for channeling the client's savings, as they establish an effective investment vehicle for them.

2.- TAXATION OF THE PREMIUMS

The premiums paid, both one-off and periodic premiums, do not enjoy any deduction or reduction in the polichyholder's taxable income base for Personal Income Tax purposes.

3.- TAXATION OF THE BENEFITS

3.1 BENEFITS IN THE FORM OF CAPITAL

The first question within the taxation of individual life insurance policies must be to determine when the return generated is subject to Personal Income Tax and when it is subject to Inheritance and Donations Tax (IDT).

Generally, when the policyholder and the beneficiary are the same person, the returns obtained by the client will be subject to tax as part of their Personal Income Tax as capital gains, thus being included within their taxable income base. Otherwise, the returns will be subject to the beneficiary's Inheritance and donations tax.

When a deferred capital sum is received, the amount of the capital gain subject to the client's Personal Income Tax will be determined by the difference between the capital received and the amount of the premiums paid.

Notwithstanding the above, if the insurance contract combines the contingency of survival with those of death or disability, and the capital received corresponds to the contingency of survival, the portion of the premiums paid that corresponds to the capital for the risk of death or disability that has been consumed to date may also be deducted, provided that throughout the contract term the risk capital represents no more than 5% of the mathematical provision. For these purposes, risk capital is considered to be the difference between the insured capital for death or disability and the mathematical reserve.

In the case of a partial withdrawal, in order to calculate the capital gain it will be considered that the amount taken out corresponds to the earliest premiums paid, including the returns on them.

N.B.: The latest reform of Personal Income Tax (Act 26/2014 of 27 November) has modified two important aspects of the previous regulations:

.- The transitional arrangement previously applicable to life insurance contracts that generate increases or reductions in capital value prior to 1 January 1999, applicable to benefits received in the form of capital corresponding to premiums paid prior to 31 December 1994, in virtue of which the capital gains generated by premiums prior to 31 December 1994 are reduced by 14.28% every year.
The abatement coefficients are maintained, although their application is limited to the income corresponding to a maximum accumulated amount of deferred capitals for life insurance policies obtained from 1 January 2015 of 400,000 euros.

.- The tax offset scheme for capital gains obtained from life or disability insurance contracts or from deposits, contracted before 20 January 2006, is repealed.
(The Thirteenth Transitional provision of the Personal Income Tax Act 35/2006 is removed)

3.2 BENEFITS IN THE FORM OF IMMEDIATE LIFE ANNUITIES

In the case of immediate life annuities that have not been acquired through inheritance, bequest or any other means of succession, the result of applying the following percentages to each annuity will be considered capital gains:

40%, when the recipient is under 40 years of age.
35%, when the recipient is between 40 and 49 years of age.
28%, when the recipient is between 50 and 59 years of age.
24%, when the recipient is between 60 and 65 years of age.
20%, when the recipient is between 66 and 69 years of age.
8%, when the recipient is over 70 years of age.

These percentages shall be the ones corresponding to the age of the annuitant at the time the income is set up, and they will remain constant throughout its validity period.

3.3 BENEFITS IN THE FORM OF IMMEDIATE TEMPORARY ANNUITIES

If the benefits in question are immediate temporary annuities that have not been acquired through inheritance, bequest or any other means of succession, the result of applying the following percentages to each annuity will be considered capital gains:

12%, when the income lasts for less than or equal to 5 years.
16%, when the income lasts for more than 5 years and less than or equal to 10 years.
20%, when the income lasts for more than 10 years and less than or equal to 15 years.
25%, when the income lasts for more than 15 years.

3.4 BENEFITS IN THE FORM OF DEFERRED LIFE OR TEMPORARY ANNUITIES

When deferred incomes are received, whether lifetime or temporary, which have not been acquired through inheritance, bequest or any other means of succession, the result of applying the corresponding percentage from among those set out in sections 3.2 and 3.3 above to each annuity will be considered capital gains, increasing it by the return obtained up until the income is set up, in the following manner:

1) The returns will be determined by the difference between the present financial-actuarial value of the income that is set up and the amount of the premiums paid.

2) This return will be distributed on a straight line basis over the first ten years of the life annuity. If it is a temporary annuity, it will be distributed on a straight line basis over the annuity term, up to a maximum of ten years.

When the incomes have been acquired by donation or any other legal trade free of charge and inter vivos, the capital gain will exclusively be the result of applying the corresponding percentage from among those set out in sections 3.2 and 3.3 above to each annuity.

Regardless of the above, if the following requirements are met:

.- The contingencies for which the benefits can be received will be those set out in article 8.6 of the revised text of the Regulation of Pension Plans and Funds Act, approved by Legislative Royal Decree 1/2002 of 29 November, in the terms established by these acts.

.- It will be understood that some kind of transfer of the insurance contract's benefits has occurred when there is a breach of the limitations regarding the exercising of the economic rights established by the first additional condition of the revised text of the Pension Plans and Funds Regulation Act, and in the regulations that expand on this Act, regarding collective insurance policies that represent company pension commitments.

Retirement and disability benefits received in the form of income by the beneficiaries of life or disability insurance contracts, other than those established in article 17.2. a), and in which there has not been any kind of transfer of the insurance contract's benefits throughout its term, will be included in the taxable income base as capital gains starting from when their amount exceeds the premiums that have been paid in virtue of the contract or, if the income has been acquired by donation or any other legal trade free of charge and inter vivos, when they exceed the present actuarial value of the incomes when they were set up. In such cases, the percentages set out in numbers 3.2 and 3.3 above will not apply. For the application of this system, the insurance contract must have been taken out at least two years prior to the retirement date.

In the event of the temporary or life annuities being discontinued, if they have not been acquired through inheritance, bequest or any other form of succession and when the income is discontinued as a result of the right to withdrawal being exercised, the capital

gain will be the result of adding the income payments to date to the amount of the withdrawal, subtracting the premiums paid and any amounts which

have been taxed as capital gains in accordance with the preceding paragraphs of this section. When the incomes have been acquired by donation or any other legal trade free of charge and inter vivos, the return accumulated up until the constitution of the incomes will also be subtracted.

Insurance or disability insurance policies that allow for benefits to be paid in the form of capital, and for that capital to be used to set up life or temporary annuities, provided that this conversion possibility is included in the insurance contract, the capital gain will be considered the result of applying the corresponding percentages from among those set out in numbers 3.2 and 3.3 above to each annuity, increased by the return obtained up until the income was set up. This latter amount will be determined by the difference between the present actuarial financial value of the income that is set up and the amount of the premiums paid. This return will be distributed on a straight line basis over the first ten years of the life annuity. If it is a temporary annuity, it will be distributed on a straight line basis over the annuity term, up to a maximum of ten years.

When the incomes have been acquired by donation or any other legal trade free of charge and inter vivos, the capital gain will exclusively be the result of applying the corresponding percentage from among those set out in numbers 3.2 and 3.3 above to each annuity. Under no circumstances will the previous two paragraphs apply when the capital is made available to the taxpayer by any means.

3.5 BENEFITS FROM UNIT LINKED INSURANCE POLICIES

Unit linked insurance policies are life insurance policies in which the policyholder assumes the risk of the investment, i.e. the financial risk is passed from the insurer to the policyholder, leaving the insurer to bear only the actuarial risk. They are life insurance policies in which the funds in which the actuarial reserves are materialised, together with a small capital sum in the event of death, are invested in the name and on behalf of the insurer in CII shares and other financial assets chosen by the insurance policyholder, who assumes the risk of the investment.

Therefore, the policyholder designates which assets they want to invest in and can modify them later.

With regard to Personal Income Tax, the returns from a contract of this nature can be taxed in two ways:

General scheme:

The returns will be taxed when the insurance policy's benefits are paid out, with the same rules as in any life insurance policy, although there will be some basic requirements that must be mandatorily met:

a) The policyholder must not be granted the faculty to modify the investments related to the policy.

b) The mathematical reserve is invested in certain assets and these appear separately on the Insurance Company's balance sheet.

c) The policyholder shall only have the faculty to choose between the different groups of assets, in which the insurance company must invest the mathematical reserve of the insurance policy, but under no circumstances may they be involved in determining the specific assets in which these provisions are invested within each separate group.

Special scheme:

In cases in which the above requirements are not met, the law allows for the returns to be taxed annually: The difference between the net asset value of the policy's assets at the end and at the beginning of the tax period will be taxed as capital gains in each tax period.

4.3 - INDIVIDUAL SYSTEMATIC SAVINGS PLANS (ISPs)

1.- WHAT IS AN ISP?

Individual systematic savings plans, popularly known as ISP ("PIAS" in Spanish), began to be marketed in 2007.

Essentially, the purpose of individual systematic savings plans is to encourage saving through certain types of life insurance in order to use the accumulated funds to produce a guaranteed life annuity. This incentive lies in the fact that the returns generated over the contribution period are exempt from taxes.

They are individual Life insurance policies which must, by definition, include a policyholder, insured person and beneficiary.

The first premium paid should have be over five years old (10 years up until 2014) at the time the life annuity is set up.

In addition to the life annuity being set up, reversal mechanisms, certain benefit periods or counterinsurance formulae in the event of death may be established.

Group insurance policies that implement commitments for pensions and social security instruments that reduce the taxable base are excluded from this contractual formula.

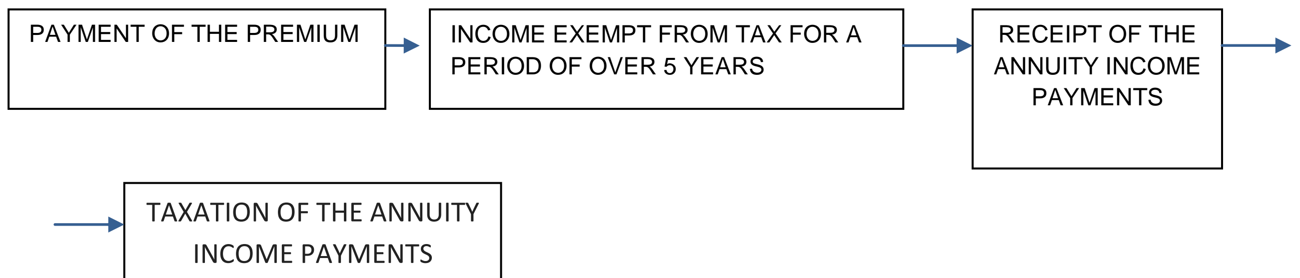
It is mandatory for it to be expressly and clearly stated in the contract conditions that it is an individual systematic savings plan and the acronym is reserved for this type of contract.

2.- ARE THERE ANY LIMITS ON THE AMOUNTS OF PREMIUMS?

The maximum annual limit that can be paid as premiums to this type of contract will be 8,000 euros, and will be independent of the limits of contributions to social security systems. Furthermore, the total amount of the accumulated premiums in these contracts may not exceed 240,000 euros per taxpayer.

3 - WHAT TAXATION RULES APPLY?

The taxation of ISPs is an important reason to take them out, since the returns produced upon setting up the guaranteed life annuities will be exempt from Personal Income Tax (remember that the first premium paid must be at least 5 years old at the time the life annuity is set up).



The return that is subject to tax in each period for receiving these immediate life annuities shall be determined by applying the following percentages to each annuity:

40%, when the recipient is under 40 years of age.
35%, when the recipient is between 40 and 49 years of age.
28%, when the recipient is between 50 and 59 years of age.
24%, when the recipient is between 60 and 65 years of age.
20%, when the recipient is between 66 and 69 years of age.
8%, when the recipient is over 70 years of age.

These percentages shall be the ones corresponding to the age of the annuitant at the time the income is set up, and they will remain constant throughout its validity period.

4.- EARLY WITHDRAWALS

Before the life annuity is set up

In the case of total or partial withdrawal by the taxpayer before the life annuity of the accumulated economic rights is set up, the withdrawal will be taxed in accordance with the provisions of the Personal Income Tax Act (as capital gains) in proportion to the withdrawal made. For these purposes, it will be considered that the amount withdrawn corresponds to the earliest premiums paid, including their corresponding returns.

After the life annuity is set up

In the case of total or partial withdrawal of the economic rights derived from the life annuity set up, the taxpayer should include in the tax period in which the withdrawal is made the return that was exempt due to the application of the provisions of letter v) of article 7 of the Personal Income Tax Act.

5.- TRANSFERS BETWEEN ISPs

The policyholders of individual systematic savings plans may transfer their mathematical reserves to another individual systematic savings plan which they hold, by unilateral decision. The total or partial transfer of a systematic savings plan to another shall follow the procedure set out regarding guaranteed pension plans insofar as it applies to them.

On an annual basis, insurance companies should inform the policyholders of individual systematic savings plans of the value of the rights they hold, and they should make this same information available to them each quarter.

6.- CONVERTING A LIFE INSURANCE POLICY INTO AN ISPs

Life insurance contracts drawn up before 1 January 2007, and in which the contractor, insured person and beneficiary are the taxpayer themselves, may be converted into individual systematic savings plans regulated in the additional third condition of this Act. Article 7.v) and the additional third condition of this same Act will therefore be applicable when the life annuities are set up, provided that the following requirements are met:

a) The maximum annual amount paid as premiums during the insurance contract's term has not exceeded the limit of 8,000 euros, and the total amount of the accumulated premiums has not exceeded the amount of 240,000 euros per taxpayer.

b) More than five years have passed since the payment date of the first premium.

Group insurance policies that implement commitments for pensions, in accordance with the additional first provision of the revised text of the Pension Plans and Funds Regulation Act, may not be converted into individual systematic savings plans, nor may social security instruments that reduce the person's taxable base be converted.

At the time of the conversion, it shall be expressly and clearly stated in the contract conditions that it is an individual systematic savings plan regulated in the additional third disposition of the Personal Income Tax Act.

In the case of total or partial withdrawal of the economic rights derived from the life annuity set up, once the conversion has been carried out, the taxpayer should include in the tax period in which the withdrawal is made the return that was exempt due to the application of the provisions of letter v) of article 7 of this Act.

7.- QUESTIONS AND ANSWERS

In this section we include some of the most important questions from among the binding enquiries made by taxpayers to the Directorate-General of Taxes.

7.1 Is it possible for a person that takes out an ISP to designate a third party as a beneficiary in the event that the insured person dies before they begin receiving the life annuity?

It is a condition that the contractor, insured person and beneficiary are the same person, which means that the policyholder must be designated as the insured person and beneficiary in the life insurance policy. If this condition is met, designating a third party as a beneficiary in the event of the contractor's death before beginning to receive the life annuity does not prevent the insurance from being considered an individual systematic savings plan, nor, therefore, does it prevent the exemption considered in article 7.v) of Act 35/2006 from applying.

7.2 What should I do if the contribution limits in an ISP are exceeded?

Making contributions that exceed the maximum limits, whether the annual or the total limit, or both, is a breach of the requirement established in the Personal Income Tax Act. This will cause the insurance contract to no longer be considered an individual systematic savings plan for tax purposes. Nevertheless, if, as a result of a withdrawal, the premiums contributed and not withdrawn do not exceed the aforementioned limits, the contract will recover its status as an individual systematic savings plan for the purposes of its tax treatment, provided that it also meets the other requirements established in the Act.

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7.3 What should I do if the contribution limits are exceeded in several ISPs?

The maximum contributions limits set out in the Personal Income Tax Act are a requirement for all contracts that are considered individual systematic savings plans taken out by the same taxpayer. As such, the contributions paid in each year to all of the contracts may not exceed the maximum annual amount, nor may they exceed the total limit, taking into account to this end all the contributions made in the previous years. Since these limits refer to all the individual systematic savings plans taken out by the same taxpayer, making contributions that exceed the annual limit or the total limit, or both, will affect all the plans equally. This will therefore result in all the plans losing their status as individual systematic savings plans for the purpose of their tax treatment. Following on from this, if a taxpayer has set up one or more individual systematic savings plans with the same insurance company, generally speaking the application of the contribution limit would mean this company would not allow contributions to any of these contracts that exceed the annual or total limit established in this standard, given that it knows the contributions made in each year by the taxpayer. Nevertheless, in the event that contributions exceeding the annual or total limit, or both, have exceptionally been made, if the taxpayer makes a draw down or withdrawal such that the premiums paid and not withdrawn no longer exceed these limits, taking into account all the individual systematic savings plans taken out, these contracts will recover their status as individual systematic savings plans, provided that they meet the remaining requirements established in the Act.

The treatment described in the previous paragraphs will also be applicable if the annual or total limit, or both, has been exceeded in contributions made to several individual systematic savings plans of different insurance companies, although in this case the insurance company's ability to not allow contributions exceeding these limits to be made to the individual systematic savings plans the taxpayer holds with it would logically be limited. With regard to draw downs or withdrawal, when this is partial, the following regulation shall apply in relation to every insurance contract in which a draw down or withdrawal is made:

“In the case of partial withdrawal in insurance contracts, in order to calculate the capital gain it will be considered that the amount withdrawn corresponds to the earliest premiums paid, including their corresponding returns.” Furthermore, the Personal Income Tax Act establishes as a requirement for the individual systematic savings plan that:

The first premium paid should be over five years old at the time life annuity is set up.” The previous paragraph must be understood as meaning that when the life annuity is set up, the regulation requires the oldest contribution paid to the plan to have remained in it for at least five years. Therefore, if there has been a draw down or withdrawal, the premiums recovered are no longer counted for taxation purposes in the insurance contract after this withdrawal.

As a result, they cannot be taken into account for calculating the required age, which must be counted starting from the date of the first contribution that has not been recovered.

7.4 How are returns originating from withdrawals that are made to comply with the annual and total limits taxed?

The returns derived from any draw downs or withdrawals made by the taxpayer to comply with the annual limits, total limits, or both, shall be taxed as a capital gain from life insurance, in accordance with article 25.3 of the Personal Income Tax Act.

7.5 What minimum information is necessary to make a transfer between two ISPs provided by two different insurance companies?

.- You should specify the amount of each of the premiums that the mathematical provision being transferred comes from, as well as the contribution date and the amount of its corresponding return generated up to the transfer date.

.- If it is a partial transfer, in order to determine what premiums together with their returns are being transferred, since the contract's mathematical provision is made up of the sum of all the premiums and their returns, the partial transfer of this mathematical provision will have to be considered as including the partial transfer of each and every one of the premiums and their corresponding returns, in the same proportion as the mathematical provision being transferred represents as a portion of the contract's total mathematical provision.

Therefore, in the event of a partial transfer, the information to be provided will be the same as that indicated above, i.e. the breakdown of each premium, its contribution date and its respective return, quantified in the same proportion as the mathematical provision represents in relation to the total mathematical provision of the individual systematic savings plan from which the transfer is being made.

.- With regard to the information regarding the return, both in total and partial transfers, this should be communicated separately for each of the premiums. Reporting a single overall figure will not be sufficient, since in the event of a future withdrawal, the insurance company needs to be able to determine the return obtained for the purposes of withholding tax.

7.6 Can a life insurance policy taken out before 1 January 2007 with an insurance company be converted into an individual systematic savings plan of another insurance company?

In this situation, there would be two different contracts: an insurance contract taken out with an insurance company that ends with the taxpayer obtaining a capital sum when the contract reaches maturity, or as a result of a total withdrawal and a new immediate life annuity insurance contract being drawn up with another company. As a result, this situation cannot be regarded as a "conversion" of a life insurance contract into an ISP.

4.4.- CAPITAL GAINS EXEMPT FROM TAXATION IN CASES OF REINVESTMENT FOR TAXPAYERS OVER 65.

1.- THE EXEMPTION OF THE CAPITAL GAIN IF A LIFE ANNUITY INSURANCE POLICY IS TAKEN OUT FOR TAXPAYERS OVER 65

The only similarity with ISPs is in the objective set by the Administration to favour taxpayers regarding the accumulation periods and their subsequent investment in life annuity insurance policies as a supplement to the public pensions system. Capital gains that arise upon the transfer of assets by taxpayers over 65 years of age may be excluded taxation, provided that the total amount obtained by the transfer is used within six months to set up a guaranteed life annuity in their favour.

In order for the exemption to apply, the following requirements must be met:

a) The life annuity contract should be drawn up between the taxpayer, who will be the beneficiary, and an insurance company.

   In life annuity contracts, reversal mechanisms, certain benefit periods or counterinsurance formulae in the event of death may be established once the life annuity has been set up.

a) The life annuity should be set up within six months of the date of the asset's transfer, its payment frequency should be at least annual, it should begin to be received within a year of it being set up, and the annual amount of the incomes may not vary by more than 5% compared to the previous year.

b) The taxpayer should inform the insurance company that the life annuity being contracted constitutes the reinvestment of the amount obtained from the transfer of assets, for the purpose of the application of this exemption.

The total maximum amount that may be assigned to setting up life annuities for this purpose, and which gives right to the exemption, shall be 240,000 euros.

When the reinvested amount is lower than the total of the amount received in the transfer, only the proportional part of the capital gain obtained corresponding to the reinvested amount will be excluded from taxation.

If, as a result of reinvesting the amount of a transfer into a life annuity, the amount of 240,000 euros was exceeded taking into account previous reinvestments, only the difference between 240,000 euros and the amount of the previous reinvestments will be considered reinvested.

The advanced receipt, total or partial, of the economic rights deriving from the constituted life annuity will determine the subjection to taxation of the corresponding capital gain. In such a case, the taxpayer shall assign the non-exempt capital gain to the year in which it is obtained and shall file a corrected version of the corresponding self-assessment tax return, paying the applicable tax including late payment interest charges. This tax return and payment should be filed in the period between the date of the breach and the corresponding deadline for filing tax returns for the tax year in which the breach occurred.

2.- INFORMATIVE TAX RETURNS

Insurance companies that offer life annuities referred to in article 42 of this Regulations must file an informative tax return in which, in addition to its identification details, the following information referring to the holders of the life annuities shall appear:

a) Name, surnames and tax ID number (NIF).
b) Identification of the life annuity, constitution date and premium contributed.
c) In the event of a total or partial withdrawal of the economic rights derived from the life annuity set up, the withdrawal date.

This informative tax return must be filed in January each year, in relation to the information corresponding to the year just ended.
This informative tax return shall be filed using tax form 188.

4.5.- LONG-TERM SAVINGS PLANS

1.- WHAT IS A LONG-TERM SAVINGS PLAN?

Since their birth on 1 January 2015, Long-Term Savings Plans are contracts drawn up between a taxpayer and an insurance company or credit institution which meet the following requirements:

Funds contributed to the Long-Term Savings Plan must be used to set up either one or several individual life insurance policies, known as Long-Term Individual Life Insurance Policies (Hereinafter SIALPs, the acronym of the full name in Spanish), or financial

deposits and contracts included in a Long-Term Individual Savings Account (Hereinafter CIALPs, the Spanish acronym).

A taxpayer may only simultaneously be the titleholder of a Long-Term Savings Plan.

Focusing on SIALPs:

Long-Term Individual Life Insurance policies (SIALPs) are an individual life insurance policy different to those set out in article 51 of this Act (contributions to social security schemes), which do not cover any contingencies other than those of survival or death, in which the taxpayer is the contractor, the insured person and the beneficiary except for in the event of death.

In the contract conditions it must be expressly and clearly stated that it is a Long-Term Individual Life Insurance policy and the acronym (SIALP) is reserved for contracts drawn up starting from 1 January 2015 that meet the requirements set out in this Act.

SIALPs shall have the following characteristics:

a) The Long-Term Savings Plan shall be opened when the first premium is paid to the SIALP, and its shall be liquidated when the taxpayer makes any withdrawal or breaches the established contributions limit, which we will discuss below.

b) Contributions to the Long-Term Savings Plan cannot exceed 5,000 euros a year in any of the years in which the Plan is valid.

IMPORTANT

For these purposes, in the case of SIALPs, when the plan reaches its maturity and, at the taxpayer's request, the insurance company allocates the full amount to set up a new SIALP contracted by the taxpayer with the same company, this will not be considered a withdrawal. In such cases, the contribution of the benefit to the new insurance policy will not count towards the maximum limit of 5,000 euros.

Furthermore, for the purposes of calculating the five-year prescribed period (necessary to consider the exemption of the returns obtained), the first premium paid to the first insurance policy through which the contributions to the Plan were implemented will be taken as a reference.

c) The taxpayer may only withdraw the resulting capital from the Plan in the form of capital, for the total amount of the plan. It will not be possible for the taxpayer to make partial withdrawals.

d) The insurance company should guarantee to the taxpayer the receipt upon the SIALP's maturity of at least a capital sum equivalent to 85% of the sum of the premiums paid.

The contracting companies should, in particular, expressly and clearly state in the contracts the amount and the date to which the guarantee of letter e) of section 1 of this additional condition applies, as well as the financial terms in which the resulting capital may be accessed or new contributions may be made before the individual life insurance policy, the deposit or the financial contract reaches its maturity.

Furthermore, the contracting companies should expressly and clearly state in the contracts that the taxpayers can only hold a single Long-Term Savings Plan at any given time, that they cannot contribute more than 5,000 euros a year to the plan, and that they may not partially withdraw the capital that is built up, as well as stating the tax effects derived from making withdrawals before or after five years have passed since the first contribution.

In accordance with the regulations, the conditions may be set out for the full amount of the economic rights of long-term individual savings plans to be transferred without this entailing the withdrawal of the funds, for the purposes of the provisions of letter ñ) of article 7 of this Act.

2.- ARE THERE ANY LIMITS ON THE AMOUNTS OF PREMIUMS?

As we have already discussed, contributions to Long-Term Savings Plans cannot exceed 5,000 euros a year in any of the years in which the Plan is valid.

3.- WHAT TAXATION RULES APPLY?

Positive returns from life insurance policies through which Long-Term Saving Plans are set up will be exempt from tax, provided that the taxpayer does not draw down on the capital resulting from the Plan before the five-year period from its opening ends.

Any withdrawal of the aforementioned capital or failure to meet any of the other requirements set out in the Personal Income Tax Act before the aforementioned period ends will make it compulsory to include in the taxable income base the returns referred to in the previous paragraph, generated during the Plan's term in the tax period in which the instance of non-compliance occurs.

The taxpayer's draw down of the capital resulting from the Plan may only be made in the form of capital, for its total amount, with partial withdrawals not being possible.

If, prior to the end of the five-year prescribed period, there is any withdrawal of the resulting capital or the contributions limit is exceeded (5,000 euros a year), the company should withhold tax from, or make a payment on account for, the positive returns obtained since the Plan was opened, including any which may have been obtained upon its liquidation.

Negative capital gains obtained, where applicable, during the Long-Term Saving Plan's term, including any which may have been obtained upon the Plan's liquidation, shall be taxed in the tax period in which this liquidation occurs and only the portion of the total amount of these negative returns that exceeds the sum of the Plan's own returns to which the exemption would have applied.

4.- TRANSFERS BETWEEN LONG-TERM SAVINGS PLANS

The holder of a Long-Term Savings Plan may transfer the entirety of the economic rights of the long-term individual savings insurance policy and the funds set up in the long-term individual savings account to another Long-Term Savings Plan they hold, without it implying the withdrawal of the funds for the purposes of considering the exemption of the returns from taxation, in the following conditions:

The transfer will not be possible in cases in which there is any legal or contractual embargo, charge, pledge or drawing limitation on the economic rights or the funds.

To make the transfer, the title holder of the Long-Term Savings Plan should contact the destination insurance company or credit institution, accompanying with their application the identification of the Long-Term Savings Plan from which the transfer will be made and the company of origin. The application shall include instructions addressed to the company of origin for it to order the transfer, and shall include an authorisation from the title holder of the Long-Term Savings Plan to the destination company so that it can request the transfer from the company of origin, in their name, as well as including all the financial and tax information necessary to complete the transfer. Specifically, the company of origin should communicate the opening date of the Long-Term Savings Plan, the amounts contributed in the current year and, separately, the total amount of the positive and negative capital gains that have been generated since the plan's opening, including any that may occur on the occasion of the transfer.

The destination company should expressly and clearly warn the taxpayer that, depending on the specific conditions of the insurance, deposit or financial contract in the Long-Term Individual Savings Plan, the amount of the transfer may be less than the amount guaranteed by the company of origin.

If there are agreements or contracts that allow the transfer applications to be managed through mediators or the commercial networks of other entities, the companies' business networks, presenting the application in any establishment of these entities will be treated as though it were carried out in the destination company. Within five business days from the destination company receiving all the necessary documentation, besides checking that the requirements established for the transfer have been met, it should communicate the application to the company of origin, indicating at least the destination Long-Term Savings Plan, the destination company and the details of the account to which the transfer must be made.

Within ten business days from when the company of origin receives the request with the corresponding documentation, it should order the bank transfer and send all of the financial and tax information necessary for the transfer to the destination company.

No penalties, expenses or discounts that are generated as a result of the transfer of funds may be applied to the amount of this transfer.

In the transfer procedures to which this additional condition refers, it is authorised for the transmission of the transfer request, the transfer of cash and the transmission of the information between the intervening companies to be carried out using Spain's National Electronic Clearing System, by means of the operations enabled in this System for such situations.

5.- INFORMATIVE TAX RETURNS

Insurance companies or credit institutions that offer Long-Term Savings Plans must file an informative tax return (tax form 280) in which, in addition to its identification details, the following information referring to the holders of the Long-Term Savings Plan during the period shall appear:

a) Name, surnames and tax ID number (NIF).

b) Identification of the Long-Term Savings Plan they hold.

c) Opening date of the Long-Term Savings Plan. If the Plan funds have been transferred, the original date will be taken.

d) Contributions made to the Long-Term Savings Plan in the period, including where applicable those prior to the transfer of the Plan.

e) Positive and negative capital gains obtained in the period.

f) In the event of the Long-Term Saving Plan's liquidation, the tax return shall state the liquidation date, the total amount of the positive and negative capital gains obtained since the Plan's opening, and the taxable base of the payment on account which must be made for tax purposes.

This informative tax return must be filed in February each year, in relation to the information corresponding to the immediately preceding year.

4.6.- LIFE INSURANCE POLICIES THAT GENERATE EARNED INCOME

In previous sections we have talked about certain Life insurance policies whose benefits are taxed through Inheritance and Donations tax. We have also discussed the taxation of insurance policies which are taxed through Personal Income Tax and classify their returns as capital gains.

We are now left to talk about group insurance policies (other than company pension plans and GPPs) that materialise the pensions commitments assumed by companies.

The main features of these insurance policies are:

a) They cover group life insurance or company pension plan policies, in which the insured person is the worker and the beneficiaries are the people in whose favour the pensions are generated, according to the commitments assumed.

b) No advances on the assured benefits may be granted to the policyholder.

c) The policyholder may not transfer or pledge the policy

d) The policyholder's rights of withdrawal and reduction may only be exercised in order to maintain in the policy the adequate coverage of its pension commitments in force at any given time, or exclusively for the purposes of including the commitments covered in this policy in another insurance contract, in a company pension plan or in another pension plan. In this last case, the new insurer or the pension plan will assume the full coverage of the aforementioned pension commitments.

e) The investments corresponding to each policy should be itemised

f) The amount of the right to withdrawal may not be lower than the realisable value of the assets that represent the investment of the corresponding actuarial reserves.

The following will be considered earned income to be included in the general taxable income base for Personal Income Tax purposes:

<u>The premiums paid by the employer</u>

Contributions paid by employers to cover the pension commitments, in the terms set out by the first additional condition of the revised text of the Pension Plans and Funds Regulation Act, and in the regulations that expand on it, when those contributions are assigned for tax purposes to the people to whom the benefits are linked. This tax assignment will be voluntary in nature in group insurance contracts other than company pension plans, and the decision adopted should be maintained for all other premiums that are paid up until the termination of the insurance contract. However, the tax assignment will have obligatory in insurance contracts considered risky. When

insurance contracts jointly cover the contin-gencies of retirement and death or disability, the assignment for tax purposes of the portion of the premiums paid which corresponds to the risk capital for death or disability will be compulsory, provided that the amount of this part exceeds 50 euros a year. For these purposes, risk capital is considered to be the difference between the insured capital for death or disability and the mathematical reserve.

Despite the provisions of the preceding paragraph, in all cases the assignment for tax purposes of premiums of the aforementioned insurance contracts will be compulsory for the amount that exceeds 100,000 euros a year per taxpayer and in relation to the same employer, except for in the group insurance policies taken out as a result of collective dismissals carried out in accordance with article 51 of the Workers' Statute.

The benefits received by the worker

Benefits for retirement and disability received by the beneficiaries of collective insurance contracts other than company pension plans, which materialise the pension commitments assumed by companies, in the terms set out in the first additional condition of the revised text of the Pension Plans and Funds Regulation Act, and in the regulations that expand on it, insofar as their amount exceeds the contributions assigned for tax purposes and the contributions made directly by the worker.

4.7 - PENSION PLANS AND GUARANTEED PENSION PLANS (GPPs)

INTRODUCTION

The purpose of publishing this section dedicated to the taxation of Pension Plans and of Guaranteed Pension Plans (equivalent products from a fiscal point of view) is to summarise the taxation details which will have a significant role in to play when we sign up for our Pension Plans and our Guaranteed Pension Plans.

The “tax saving” component is a highly significant factor to be taken into account when contracting those products.

The methodology employed follows the template of the whole manual by structuring the information into two aspects:

.- Taxation of the contributions

.- Taxation of the benefits/transfers

Notes:

.- Taking the purpose of the manual into account, we must relate its geographical scope to the general context of Spain as a whole, "Common Territory", and to residents living in it.

.- Any reference to the taxation of Pension Plans must be considered as extending to Guaranteed Pension Plans.

LEGAL REGULATIONS

The main state-wide and regional provisions in the context the taxation rules applied to the operations of Pension Plans are:

Act 35/2006	Personal Income Tax Act
Royal Decree 439/2007	Regulations of the Personal Income Tax Act
Royal Decree-Act 1/2002	Revised text of the Pension Plans and Funds Regulation Act
Royal Decree 304/2004	Pension Plans and Funds Regulations

BRIEF DICTIONARY

Pension plans must be defined as voluntary welfare systems which, supplementing the Social Security pension system, contribute to providing their members or beneficiaries with an income, primarily in the cases of:

.- Retirement

.- Death

.- Total and permanent incapacity to work for one's usual profession or absolute and permanent disability for all work and severe disability.

.- Severe or high dependency of the member

In Spain, the gap that exists between the trend in the number of people paying Social Security contributions and the current level of assistance that this public pension system offers to an ever increasing number of pensioners is a major factor contributing to the fact that, in very near future, pension plans must become one of the cornerstones of private saving and a true guarantor of a deferred system of alternative social security.

Before looking at the tax treatment of contributions, benefit payments and transfers, we will dedicate a section to going over a summary of terms that we include as a brief dictionary.

ITEMS

Pension plan: A voluntary social security system that defines the right of people in whose favour it is set up to receive income or capital payments for retirement, survival, widowhood, orphanhood or disability, as well as defining the obligations to make contribution to them, the rules for setting them up and their operation.
As they are set up voluntarily, their benefits will not substitute the prescriptive benefits applicable in the corresponding Social Security scheme under any circumstances. In this sense, they are private in nature and may or may not supplement the aforementioned Social Security benefits.

Pension fund: A set of assets created exclusively for the purposes of fulfilling the benefits set out in the Pension Plans that make it up.
A Pension fund can include one or several Pension plans.

Sponsor of the Plan: Any entity, corporation, company, association, trade union or group of any kind that initiates its creation.

Shareholders: They are always individuals and the plan is set up in their interest, regardless of whether or not they make contributions.

Beneficiaries: The individuals with a right to receive benefits, regardless of whether or not they have been members.

PF Management Company: Limited companies (sociedades anónimas) that are wholly dedicated to managing the Pension Fund. Insurance companies that are authorised to operate in Spain in the field of direct life assurance and social security mutual societies can also be PF management companies.

PF Depository Company: Credit institutions whose main mission is the custody and deposit of the tradeable securities and other financial assets included in the PF.

Individual system: The members are individuals and the sponsor company is a financial institution.

Company system: The members are the employees of a company or institution.

Associate system: The members are part of an Association, Trade union, guild or group.

TAXATION OF CONTRIBUTIONS

Contributions to an individual Pension Plan usually come from the member's own contributions, although other situations could arise in certain circumstances, such as contributions made in favour of the person's spouse or in favour of disabled people.

Articles 51, 52 and 53 of Act 35/2006 of 28 November (the Personal Income Tax Act) regulate the deductions applicable in the taxable income base in each situation.

Therefore:

a) **Financial limit (contribution limits):** The maximum total of all annual contributions made to social security systems (pension plans, social security mutual societies, guaranteed pension plans, company pension plans and private dependency insurance policies) that can give rise to the right to a deduction in the taxable income base (including those paid by the sponsor companies) may not exceed **€8,000 per year**.

b) **Tax limit (deduction limit):** As an overall maximum limit for the deductions set out in the previous section, the lower of the following amounts shall apply:

   .- **30%** of the sum of the net income from employment and business activities received individually during the tax year.

   .- **€8,000 per year**

c) Members that have made contributions within the financial limit to social security systems, including where applicable any contributions made by the sponsor company, may deduct the sums contributed from their taxable income in the following five years when these contributions have not already been used to reduce the taxable income base due to it being too low or due to the percentage limit established in the previous section applying.

   This rule shall not apply to contributions that exceed the maximum limits established as a financial limit.

d) There is a special scheme for contributions made to pension plans of members who are disabled (with a physical disability of at least 65%, a mental disability of at least 33%, as well as people who have a disability that has been legally declared). The overall annual limit for contributions made in favour of others and one's own contributions is €24,250.

e) Regardless of deductions applied based on the limits above, taxpayers whose spouse does not receive any income to be included in their taxable income base, or where their income is less than €8,000 per year, may deduct from their taxable income base any contributions made to pension plans which this spouse is a member of, up to a maximum limit of €2,500 per year.

   These contributions will not be subject to Inheritance and Donations Tax.

f) Contributions made after retirement:

   As a new feature since 2007, a member who has already retired but who has not yet received their retirement benefits because they have decided and declared their intention to receive it at a later date, may continue to make

contributions to cover their retirement (benefiting from the resulting tax deduction). When the date they have set for starting to receive the benefits comes, they can also receive the amounts contributed since they retired up until that day they began to receive the benefit payments.

However, members should be warned that if the retired member has already received the retirement benefits, contributions made after doing so may only be received in the event of the contingency of Dependency, or by the plan beneficiaries in the event of the member's Death.

N.B.: An exception is made in the case of Guaranteed Pension Plans, since the main guarantee is that of retirement and if this coverage disappears, the insurance could not continue.

TAXATION OF BENEFITS

Provisions received by the beneficiaries, both in the form of capital and in the form of income (even due to the death of the member), shall be considered subject to the Personal Income Tax of the beneficiary, being classified as “earned income” and included in their entirety in their general taxable income base (the reduction of 40% that applied in certain situations under the previous Personal Income Tax Act is no longer possible).

However, the twelfth transitory provision of the current Personal Income Tax Act designs a transitional arrangement for the taxation of benefit payments of pension plans, social security mutual societies and guaranteed pension plans.

a) For benefits derived from contingencies occurring before 1 January 2007, beneficiaries may apply the financial method and, where applicable, apply the reduction allowed for in article 17 of the revised text of the Personal Income Tax Act that was in force on 31 December 2006 (the former reduction of 40%).

b) For benefits derived from contingencies occurring from 1 January 2007 onwards, for the portion corresponding to contributions made up to 31 December 2006, beneficiaries may apply the reduction referred to in the previous paragraph.

. Tax will be withheld from the total amount of the benefits paid (upon receipt of the consolidated rights in the Plan), at the applicable rate according to the approved tax withholding rate tables.

. Tax is paid on the amount received, even if this represents an amount that is less than the amount contributed.

The transitional arrangement considered in the twelfth transitory provision may only apply, where applicable, to the benefits received in the period in which the corresponding contingency occurs, or in the following two periods.

However, in the case of contingencies that occurred from 2011 to 2014, the transitional arrangement may only apply, where applicable, to the benefits received up until the end of the eighth tax period after the period in which the corresponding contingency occurred. In the case of contingencies that occurred in 2010 or prior periods, the transitional arrangement may only apply, where applicable, to benefits received up until 31 December 2018.

Year of contingency's occurrence	**Maximum collection period with a deduction of 40%**
2008 or earlier	31/12/2018
2009	31/12/2018
2010	31/12/2018
2011	31/12/2019
2012	31/12/2020
2013	31/12/2021
2014	31/12/2022
2015 or later	31/12 + 2 years

TAXATION OF TRANSFERS

As was already happening with transfers between pension plans, and as a new arrangement starting from 2007, consolidated rights could be transferred from Pension Plans to GPP products and vice versa, without any tax cost whatsoever.

As a result, this transfer (full or partial) will not produce any taxable gain whatsoever to be included in the client's taxable income base.

PRACTICAL MATTERS

CONTRIBUTIONS TO INDIVIDUAL PENSION PLANS

1.- Who can make contributions to the pension plan?

In individual Pension Plans, only the members themselves can make contributions, all of this without prejudice to the special scheme for people with disabilities and the scheme for contributions in favour of one's spouse.

2.- Can the same person contract several pension plans?

Of course. Provided that the financial limits in force are respected, you may be a member of one or several plans, even different types of plans (company and associate plans).

3.- Do I always have to make contributions of the same frequency and amount?

There is full flexibility when it comes to making contributions. Both their amount and frequency can be freely established, or suspended and resumed at another time.

4.- Can I contribute any amount, according to my purchasing power and/or preferences?

Yes, provided that the financial limits are not exceeded.

Remember that:

The maximum total of all annual contributions made to social security systems (pension plans, social security mutual societies, guaranteed pension plans, company pension plans and private dependency insurance policies) that can give rise to the right to a deduction in the taxable income base (including those paid by the sponsor companies) may not exceed **€8,000 per year.**

5.- What does it mean that a Pension Plan is an savings instrument with deferred tax payment?

The deferral of the tax payment is one of the key factors to be taken into account when contracting these products, due to the tax saving that can be achieved.

Reducing our income that is subject to tax, as we apply the deduction of our contributions each year and defer their taxation until the time we receive the consolidated rights of our plan, helps to generate a significant tax saving.

6.- Can I deduct each year all the contributions made in that period?

Yes, provided that the tax limits in force are not exceeded:

The lower of the following amounts:

.- **30%** of the sum of the net income from employment and business activities received individually during the tax year.

.- **€8,000**

7.- What happens if my contributions exceed the financial limits?

The Management Companies of the Pension fund are required to ensure that the financial limit of contributions is strictly complied with. Nevertheless, excesses could occur if the same client makes several contributions to several Pension funds, hence controlling this limit as a whole becomes very complicated.

If an excess exists, the member is also required to report it and must withdraw the excess contributions before 30 June of the following year, without any sanction whatsoever being applied. After that date, failure to comply with the financial limits will be penalised with a fine amounting to 50% of the excess.

8.- What happens if my contributions exceed the tax limits?

If in a particular year the contributions made (complying with the financial limits) cannot be fully used as a tax deduction, either because the amount exceeds the percentage limit on incomes or because the taxable income base is negative, the excess could be applied with the same limit in the next five years.

9.- Can a retired member continue making contributions to the plan for the retirement cover?

Yes, as long as they have not begun to receive the retirement benefits.

10.- Can a member that has no earned income from employment or business activities open a Pension Plan?

Yes, there is no legal obstacle. However, the fact that the amount of the tax incentive is linked to the amount of earned income from employment or business activities seems to limit the group which this kind of product is intended for.

Opening a Pension Plan in this situation would be under limits, and would be suitable in the case of contributions made to pension plans of a person's spouse that does not receive this kind of income above 8,000 euros a year.

The spouse paying the contributions would be able to enjoy a new deduction in their taxable income base, separately from the deduction for their own contributions, up to a limit of 2,500 euros.

11.- What would the contributions limit be for a married couple who file their annual Personal Income Tax return jointly?

In the case of a joint tax return, both the financial and the tax limits would be multiplied by two.

12.- Do cross-border contributions to pension plans within the EU have the same tax treatment as national contributions?

Yes, the current Personal Income Tax Act states that:

Contributions made by members to pension plans regulated by Directive 2003/41/EC of the European Parliament and of the Commission, of 3 June 2003, regarding the activities and supervision of company pension funds, including contributions made by the sponsor companies, shall be given the same tax treatment provided that the following requirements are met:

a) The contributions are attributed for tax purposes to the member to whom the benefits are linked.

b) The right to receive the future benefits is irrevocably transferred to the member.

c) Ownership of the funds that make up this contribution is transferred to the member.

d) The contingencies covered should be those set out in article 8.6 of the revised text of the Pension Plans and Funds Regulation Act, approved by Legislative Royal Decree 1/2002 of 29 November.

13.- In the event of the member's death, can the beneficiary of the pension plan continue making contributions?

No, they could only:

a) Collect payment of the benefits

b) Not collect the benefits and leave the plan dormant awaiting new contributions

c) Transfer the plan to another PP

BENEFITS

1.- How are benefits derived from the death of the member taxed?

The death benefit would be taxed as earned income (Personal Income Tax) in the beneficiary's taxable income base. Therefore, it would not be subject to Inheritance and Donations Tax.

2.- Is the return subject to tax the difference between what I receive and the contributions I have made throughout the life of the Plan?

NO, the gross return subject to tax is the gross amount received. The contributions were already deducted for tax purposes in each of the periods in which they were made.

3.- What is meant by consolidated rights?

A member's consolidated rights correspond to the certain economic value at a particular time derived from the shares they hold.

The equation for determining their amount is the number of units owned by the member multiplied by the unit value in euros on a given date.

4.- If, when receiving the consolidated rights of my Plan, I receive less than the contributions I have made, do I have to pay any tax?

YES, since as we said in question no. 2: The return subject to tax must be the same as the gross amount received.

5.- When I receive my consolidated rights, will any tax be withheld on the payments?

YES, the gross amount is subject to Personal Income Tax withholding, under the concept "Withholding on earned income".

6.- How would the benefit payments of a pension plan be taxed? Is it possible to apply a reduction of 40%?

At present, that benefit for returns originating from contributions made since 1 January 2007 has disappeared, since both if the benefit is received in the form of income and if it is received in the form of capital, the return subject to tax will be the same as the gross amount received (without the amount being reduced due to the tax withholding).

Nevertheless, the twelfth Transitory Provision of Act 35/2006 (the Personal Income Tax Act) allows that in the case of benefits derived from contingencies that occurred since 1 January 2007, for the portion corresponding to contributions made up until 31 December 2006, beneficiaries may apply the old scheme (reduction of 40%).

However, in the case of contingencies that occurred from 2011 to 2014, the transitional arrangement may only apply, where applicable, to the benefits received up until the end of the eighth tax period after the period in which the corresponding contingency occurred. In the case of contingencies that occurred in 2010 or prior periods, the transitional arrangement may only apply, where applicable, to benefits received up until 31 December 2018.

Year of contingency's occurrence	Maximum collection period with a deduction of 40%
2008 or earlier	31/12/2018
2009	31/12/2018
2010	31/12/2018
2011	31/12/2019
2012	31/12/2020
2013	31/12/2021
2014	31/12/2022
2015 or later	31/12 + 2 years

7.- I have taken out a Pension plan with a guaranteed return with a banking institution. How will the benefit payments derived from the plan be taxed?

The return offered by the company that markets the Plan is guaranteed by the financial institution, not by the Pension Plan or its management company, meaning it is not a benefit paid by the Plan itself.

Therefore, in the event that the value of the consolidated rights is lower than the value indicated in the commitment agreed for the payment, the amount obtained must be considered an “extra return” that will be taxed as “Capital gains”.

Given that the payment obligation arises at a particular moment when certain conditions are met, no reduction percentage derived from the provisions of the twelfth TP of the Personal Income Tax Act would apply.

8.- How does the inland revenue receive information on our Pension Plan contributions and benefits?

The Management Company of the Fund to which the client's Pension plan of is assigned is legally required to communicate these details each year, by completing tax forms 345 and 190.

9.- Does the taxation with a reduction of 40% of the benefits paid in the form of capital, applying the twelfth transitory provision of the Personal Income Tax Act, depend on the number of plans I have, or on the year I receive the benefits?

Although financially you can obtain as many capital sums as the number of pension plans you have, from a tax point of view the treatment set out by the Personal Income

Tax Act for benefits received in the form of capital refers to a single member and a single contingency.

As such, regardless of the number of pension plans a person has, the reduction of 40% may only be applied on the amounts received in a particular year and provided that two years have passed between the first contribution and the time of retirement. It is not compulsory to apply this reduction to the first capital sum received.

The rest of the amounts paid from all the other pension plans the client holds will be treated for tax purposes as benefit payments in the form of income, without any deduction whatsoever.

10.- When I retired, I chose to receive my benefits in the form of income, and after three months I am going to withdraw the remaining amount in a single payment. Will I be able to apply the reduction of 40% of the capital that applies to contributions made up until 31 December 2006?

Yes, as appears in various binding enquiries published by the Directorate-General of Taxes.

11.- Can an embargo be placed on the consolidated rights of pension plans?

No embargo can be placed on the consolidated rights until they are received.

12.- Until when can the twelfth transitory provision be applied?

The transitional arrangement set out in this provision may only be applied, where applicable, to benefit payments received in the period in which the corresponding contingency occurs, or in the following two tax periods.

However, in the case of contingencies that occurred from 2011 to 2014, the transitional arrangement may only apply, where applicable, to the benefits received up until the end of the eighth tax period after the period in which the corresponding contingency occurred. In the case of contingencies that occurred in 2010 or prior periods, the transitional arrangement may only apply, where applicable, to benefits received up until 31 December 2018.

13.- Has the tax reform created any new liquidity benefits?

Yes, since you will be able to access the consolidated rights corresponding to contributions made since 1 January 2015 ten years have passed". Furthermore, it indicates that "you will be able to access the economic rights that the member had on 31 December 2014 once ten years have passed". This means that in any case the contributions and rights may not be withdrawn before 1 January 2025.

This liquidity scheme will apply both to individual and associate pension plans and to guaranteed pension plans, company pension plans and to insurance contracts taken out with social security mutual societies that reduce the taxable income base for Personal Income Tax, according to article 51 of Act 35/2006.

TRANSFERS

1.- Can I transfer my consolidated rights from an Individual pension plan to a company one?

YES, provided that the specifications of the Pension plan allow it.

With regard to the reciprocal plan, a member of a company plan may only transfer the consolidated rights as a result of the termination of the employment or services relationship with the sponsor company.

The transfer can be made to a Company, Individual or Associate Pension Plan.

2.- Can I transfer my rights from an Individual pension plan to a Guaranteed pension plan, without any tax cost?

YES, transfers between these two social security vehicles do not carry any tax cost whatsoever, since consolidated rights are transferred without any income being received.

3.- Is it possible to transfer my consolidated rights between pension plans of different member states of the European Union?

At present, in Spain there is no transposition of regional directives that allow for consolidated rights to be transferred between pensions systems or funds of different member states.

Since such transfers are not considered, we must refer to the provisions of the law of the country of origin of the plan. As such, it will be the legislation of that country that will determined whether or not the consolidated rights may be transferred (with the corresponding tax charge) and invested in another Member state, taking into account where applicable the maximum contribution limits.

4.- Is the gift that they offer me when transferring the consolidated rights from one Pension plan to another Plan of another company exempt from tax?

Gifts in cash or in kind that the various companies that offer pension plans give to new clients that have transferred their rights from another Pension plan are not exempt from tax.

They are treated as capital gains, and are subject to the corresponding tax withholding or payment on account.