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Cash payment of occupational benefit savings capital on definitive departure from Switzerland with effect from 1 June 2007

(status as of 1 May 2012)

Pursuant to the convention on freedom of movement between the Member States of the European Union and Switzerland, Switzerland has adopted EU law in this area. The compulsory component of occupational benefits has been defined in this connection as an integral part of the Swiss social insurance schemes. The most important implication of EU law for occupational benefits concerns the transfer of vested benefits on definitive departure for an EU or EFTA Member State.

In case of permanent departure from Switzerland after 1June 2007, cash payment of the compulsory part of a vested benefit will no longer be possible if the person concerned must continue to hold compulsory insurance in another EU (or EFTA) Member State. The compulsory requirement for retirement, disability and survivors pension insurance to be held will be determined by the law of each particular country.

1. Circumstances concerned

If a person has left Switzerland before 1 June 2007 (as well if someone left Switzerland for Bulgaria or Romania before 1 January 2009), the entire vested benefit can be paid out in cash according to former law. The applicability of the new law is determined by the date of the definitive departure from Switzerland.

2. Persons concerned

All persons who leave definitively for an EU or an EFTA country are concerned. The nationality of the person is irrelevant.

3. Benefits concerned

That part of the vested benefit which is derived from a compulsory occupational benefit scheme is concerned.

The component of the vested benefit which exceeds the statutory minimum benefit amounts (non- compulsory part) is not affected. Retirement benefits on reaching the ordinary pensionable age or the age of early retirement (insofar as the regulation provides this possibility), as well as disability and death benefits, are likewise not concerned.

As a peculiarity of Swiss benefit law, early drawing in favour of owner-occupied home ownership continues to be possible within the range of the compulsory occupational benefit even if the residential property is located in the new EU or EFTA country of residence.

Small vested benefits in an amount of up to one annual employee's contribution can likewise continue to be paid out in cash.

These regulations do not apply to benefits from tied occupational pension schemes (pillar 3a).

4. Obligation of the occupational benefit institutions to verify the situation

If a person with former occupational benefit insurance has left Switzerland definitely after 31 May 2007 and asks for his vested benefit to be paid out in cash, the competent pension scheme must check, in addition to the other conditions for cash payment (definitive departure from Switzerland, written consent of the spouse etc.), whether the insured person is moving to an EU or EFTA country, and if so, if he must continue to have compulsory retirement, disability and survivor's benefit insurance (under a state benefit scheme) in that country. The confirmation by the competent foreign authority as to whether the person is or is not liable for compulsory insurance is binding on the pension scheme.

5. Clarification of the social insurance obligation

The insured person must show that the conditions for a cash payment are satisfied. To clarify the social insurance obligation in an EU or EFTA country, the person concerned may contact the LOB Guarantee Fund (LOB Guarantee Fund, Business Office, Postfach 1023, 3000 Bern 14).

The LOB Guarantee Fund has entered into agreements with the social insurance authorities of various EU countries on cooperation in determining whether social insurance is compulsory in the country concerned. If a person leaves Switzerland definitely, he may obtain an application form from the LOB Guarantee Fund to clarify the requirement for compulsory social insurance. This form must be made out in full and returned to the LOB Guarantee Fund. The personal particulars obtained will then be notified to the competent social insurance authority which will determine, with reference to a key date, whether the person is required to have compulsory social insurance (Exception for France: The second part of the application form has to be completed by the applicant's health insurance. Therefore the application form must be sent primarily to his health insurance. Afterwards the insured person transfers the formulary with the health insurance's confirmation to the LOB Guarantee Fund). At the same time, the LOB Guarantee Fund verifies whether further occupational benefits savings capital has been reported for the applicant person to the second pillar central office. The foreign social insurance authority notifies the outcome of its verification to the LOB Guarantee Fund, whereupon the latter informs both the applicant person and the pension scheme.

If there is no State social insurance obligation, the pension scheme may pay out the entire occupational benefit savings capital in cash. In this connection the administrative provisions of the particular pension scheme must be noted.

If the person departs definitely for a country with which no agreement on cooperation has as yet been concluded, he may obtain a general form from the LOB Guarantee Fund to clarify the social insurance obligations in an EU or EFTA country. The completed form will likewise be forwarded by the LOB Guarantee Fund to the competent foreign authority which, after clarifying the matter, will confirm whether the individual is or is not required to have compulsory state pension insurance.

6. No cash out payment possible

If the person continues to be subject to a compulsory social insurance requirement in an EU or EFTA country, the compulsory part of his vested benefit will remain blocked in Switzerland. The insured person has the opportunity to open a vested benefit account at a bank or to set up a vested benefit policy with an insurance company. If he fails to notify the pension scheme of the destination to which the money is to be transferred, the savings capital will be transferred to the LOB Cushioning Scheme Foundation, Vested Benefit Account Administration. In a majority of cases, the savings capital cannot be withdrawn in cash as a retirement benefit less than five years before reaching the ordinary pensionable age (59 for women and 60 for men).

Transfer of the vested benefit credit balance to an pension scheme in an EU or EFTA Member State is not possible (exception Principality of Liechtenstein, see Section 7 below).

7. Definitive departure for the Principality of Liechtenstein

On the basis of a supplementary agreement concluded between Switzerland the Principality of Liechtenstein, no cash payment can be made on definitive departure for Liechtenstein. If the person concerned takes up gainful employment in Liechtenstein, the vested benefit must be paid to the new Liechtenstein-based pension benefit scheme responsible. As far as the transfer of vested benefits is concerned, Switzerland and the Principality of Liechtenstein form a single economic area.

8. EU and EFTA countries

EU countries: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Spain, Sweden, Slovakia, Slovenia

EFTA countries: Iceland, Norway, Principality of Liechtenstein and Switzerland.

9. Links and addresses

www.verbindungsstelle.ch

www.soziale-sicherheit-ch-eu.ch

www.sozialversicherungen.admin.ch

www.europa.eu (EU in general)

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info@verbindungsstelle.ch

Examples of specific cases

Case 1

A Spanish citizen left Switzerland definitely at the end of 2006 and moved to Madrid. His full vested benefits (both compulsory and additional) acquired in Switzerland can be paid out in cash because the new regulation had not yet entered into force and were not applicable at the time of his definitive departure.

Case 2

A Portuguese citizen leaves Switzerland definitively at the end of June 2007 to settle in Lisbon. In Portugal, this person must have compulsory insurance for retirement, disability and survivor's benefits. Only the part of his vested benefits acquired in Switzerland in excess of the compulsory component can be paid out in cash. The compulsory component must be transferred to a vested benefits account or invested in a vested benefits policy. A cash payment is possible only if the person concerned is no longer required to hold compulsory state insurance or has reached pensionable age.

Case 3

An Italian citizen leaves Switzerland definitely at the end of April 2007 and settles in Rome. He presents a request for a cash payment to the pension scheme on 15 August 2012. As his departure from Switzerland took place before the entry into force of the new regulation, the entire vested benefit can be paid out to him in cash.

Case 4

A Swiss citizen leaves Switzerland definitely at the end of 2012 and settles in Paris. The regulation concerning cash payments likewise apply to Swiss citizens. As long as the person concerned is liable for state insurance in France, only the part of the acquired vested benefit which exceeds the compulsory sum can be paid out in cash. The LOB component must be transferred to a vested benefit account or invested in a vested benefit policy.

Case 5

A German citizen leaves Switzerland definitively at the end of August 2012 and settles in Munich. His new employer also has a pension fund (occupational benefits). His vested benefit acquired in Switzerland cannot be transferred to the pension fund in Germany. The money representing the compulsory component must be transferred to a vested benefit account or invested in a vested benefit policy, while the component which exceeds the compulsory sum may be paid out in cash.

Case 6

An Austrian citizen leaves Switzerland definitively at the end of August 2012 and settles in Vaduz. His new employer also has a pension fund. The vested benefit from the Swiss occupational benefit scheme must be transferred to the pension scheme of the new employer. No agreement on the transfer of occupational benefit monies exists with the Principality of Liechtenstein.

Case 7

A person leaves Switzerland in September 2012 and moves to the EFTA country Norway to become self-employed. He has no entitlement to cash payment of the vested benefit insofar as he continues to be required to have a state pension insurance in Norway. The decisive criterion is therefore not the commencement of a self-employed activity, but the requirement to belong to the pension insurance scheme of the Member State concerned

Case 8

A person who has settled in an EU/EFTA country would like to draw benefits for the facilitation of home ownership. This continues to be possible because the promotion of private home ownership is not affected by the convention on freedom of movement.

Case 9

A Canadian citizen leaves Switzerland definitively at the end of 2012 and settles in Rome. This person must have compulsory pension, disability and survivor's benefit insurance in Italy. Only the component of the vested benefits acquired in Switzerland which exceeds the compulsory minimum may be paid out in cash. The compulsory part of the vested benefits must be transferred to a vested benefits account or invested in a vested benefits policy. The new provisions on the cash payment of vested benefits apply, regardless of the nationality of the person concerned.

Case 10

A Frenchman leaves Switzerland definitively at the end of 2012 to settle in Montreal. In Canada, that person is required to hold insurance for retirement pension, disability and survivor's benefits. As the person concerned is leaving for a "third country", i.e. a non-member state, he can receive full cash payment of the vested benefits acquired in Switzerland. The provisions on the limitation of cash payment apply only in the event of permanent departure for an EU or EFTA Member State.