An instinct for growth™

Pension due diligence

A pension scheme can bring legal and financial risks. There's also a chance of directors of a limited liability company being held personally liable. Therefore, it is good to have a check done when acquiring or selling a company into the risks related to pensions: a 'pension due diligence'.

When to do a pension due diligence?

A pension due diligence is especially relevant upon buying or selling a company. But, even when there is no sale or purchase, it can be sensible to examine the pension risks for your company. For example when:

- you are entering into a partnership;
- you are entering into financial obligations;
- as a 'baseline' measurement in order to determine whether the former transition to new pension contracts was well executed.

What are your risks?

With regard to pensions, you must take the following risks into account:

Mandatory affiliation with a sectoral pension fund?

This often has retroactive effect and can lead to a substantial contribution invoice from the sectoral pension fund for the 'missing years'. The pension commitment can furthermore be fiscally excessive if you already have a pension scheme with an insurer. If you do not report an inability to pay on time, or act in bad faith, a sectoral pension fund can also hold your directors personally liable.

Pension commitment is not up to date

- Have all your employees been registered (on time)?
- Is the agreed upon contribution actually being paid?
- Are the accrued entitlements in line with the pension entitlement? Research by the Dutch Central Bank show that this is often not the case.

Incorrect execution of and non-current pension commitment

Pension legislations have changed frequently in the past few years, increasing the risks of an incorrect entitlement.

Waiver of pension inadequately documented

Waiver statements are still sometimes used but are often insufficiently documented. This can give rise to enormous financial consequences and/or discussions with employees and their next of kin.

Incorrect communication about changes in the pension plan

With the implementation of the Pension Law on 1 January 2007, a proper communication about the pension plan has become the responsibility of the employer. If changes in the pension plan are not communicated correctly, an employee will be able to, at a later stage, invoke a claim based on the old scheme. This can lead to substantial supplementary premiums for your company, which have to be paid immediately.

No written agreement on changes

Even when there’s a mandatory change to the pension plan, an employee has to agree to these changes (preferably in writing). If this does not occur, the employee can claim that he has not agreed and that the pension entitlement must be kept at the old level. This can lead to financial obligations for the employer.

What can you expect from us?

Based on the information to be provided by you, we will conduct an investigation. This investigation can be ‘high level’ (only scanning for big risks) or more comprehensive (all risks will be stated and calculated). The details will of course be determined together with you in advance.

Bundling of knowledge

Using our in-house expertise and by bundling our fiscal and legal knowledge and our relevant experience in the field of pensions, we are able to optimally advise employers. After all, we know your company like no other!

Would you like more information about our pension services? Please contact one of our pension advisers or your regular contact.