IPEBLA

International Pension & Employee Benefits Lawyers Association

# Friction at the Border - Recent Cross Border Developments

**International Pension and Employee Benefits Lawyers Association**

**Athens, Greece May 24-27, 2009**

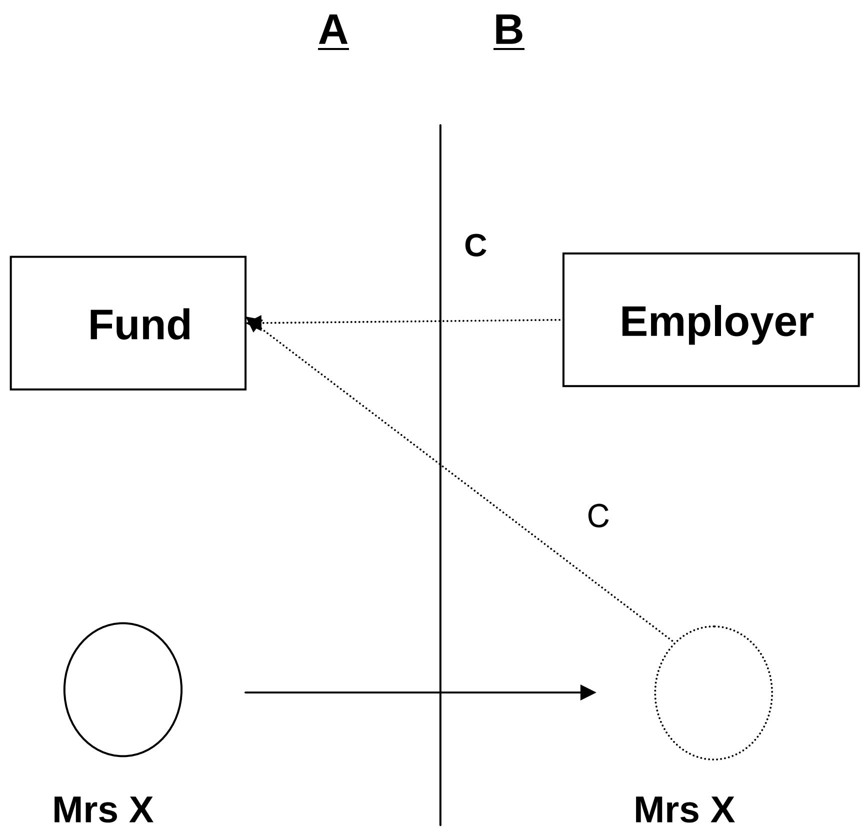

Peter Schonewille - European Commission, Brussels
Koen Van Duyse – Tiberghien Lawyers, Brussels
David W. Powell - Groom Law Group, Washington, DC

# The panel

- **Peter H. Schonewille**
  - Certified Public Accountant in the Directorate–General Taxation and Customs Union of the European Commission in Brussels
  - Associated with the Competence Centre for Pension Research of Tilburg University
  - Teaches EU Pension Taxation Law at the NETSPAR program at Tilburg University and EU case law on direct taxation at the PILC program of Free University Brussels
- **Koen Van Duyse**
  - Partner in TIBERGHIEN, a leading tax law firm in Brussels and specializing in compensation schemes, pensions, pension funds banking, finance and insurance
  - Lecturer at the University of Leuven on International Taxation of Pensions
- **David W. Powell**
  - Principal, Groom Law Group, Chartered, Washington, DC, a leading employee benefits specialty firm in the US
  - Attorney and Certified Public Accountant
  - American College of Employee Benefits Counsel
  - Listed in Best Lawyers in America for Employee Benefits in Washington, DC
  - US Editor, International Pension Lawyer

# Cross Border
# Pension Contributions

# Case 1: mobile worker



# Case 1: mobile worker

*Facts:*

(i) **Mrs X**, resident of A works temporarily in B, becomes resident of B;
(ii) **Employer** is a resident of B;
(iii) **Pension fund** is a resident of A.

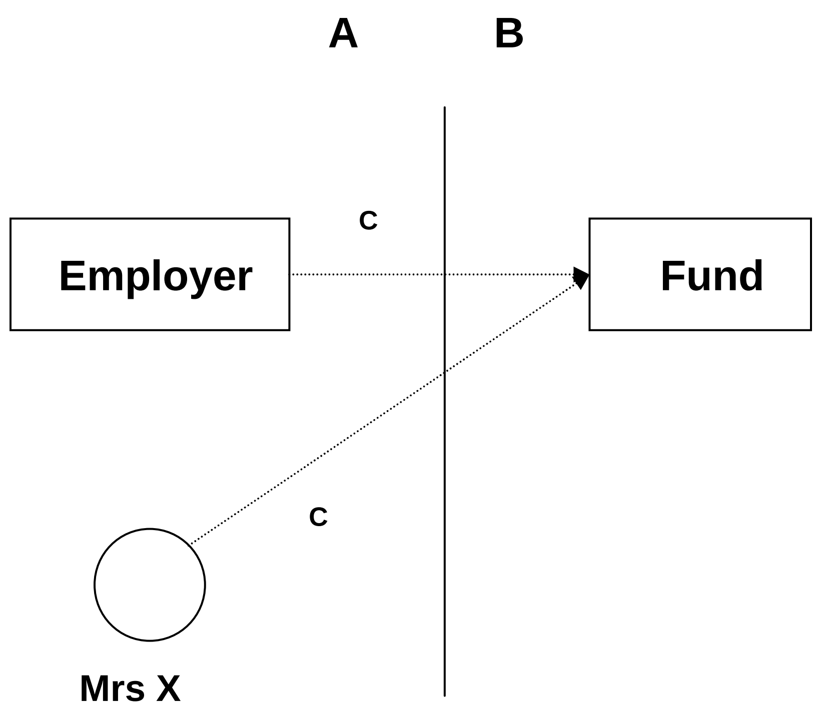
While working in B **Mrs X** continues to pay contributions to her **Pension Fund** in A. **Employer** will contribute to the same Fund in A

# Case 1: mobile worker

*Issues:*

- Does B give relief for contributions paid by **Mrs X / Employer** to the fund resident in A?
- Would it be “technically” possible to claim relief for contributions paid by Mrs X in A (in case she is not a resident of B)?
- Is there anything in the OECD MC or in EU law protecting Mrs X and/or the employer?

# Case 2: non-mobile worker



# Case 2: non-mobile worker

*Facts:*

(i) **Mrs X**, long-term resident of A which is also her work State;
**(ii) Employer** is a resident of A;
**(iii) Pension fund** is a resident of B.

While working in A **Mrs X,** for her own convenience**,** contributes to a **pension fund** in B. **Employer** contributes to the same fund in B

# Case 2: non-mobile worker

*Issues:*

- Does A give relief for contributions paid by **Mrs X / Employer** to the fund resident in B?

- Is there anything in the OECD MC or in EU law protecting Mrs X and/or the employer?

# OECD Model Convention

- Nothing specific on cross-border pension contributions

- Non-discrimination (Art. 24 (4) OECD MC)
  - Interest, royalties & **other disbursements** paid by an enterprise of CS to a resident of other CS are deductible **under same conditions** as if paid to resident of first CS

- Only a partial solution:
  - only deduction of employer contributions;
  - does not deal with employer contributions taxed as salary to employee;
  - of no help if pension fund is in a non-treaty country.
  - some States do not recognize the comparability of the pension funds and deny deductions on that ground

## Optional clause OECD Comm. 18 §37

- Purpose
  - To ensure that individuals are not discouraged from taking up overseas work
  - To ensure equivalence of treatment of pension plans in the two States
  - To establish limits on the tax relief based on the limits in the two States

- What?

# Optional clause OECD Comm. 18 §37

- Unlike 1992 version, 2005 version covers:
  - Not only occupational pension schemes, but individual retirement schemes and social security schemes
  - Independent contractors as well as employees
  - Employee as well as employer contributions
  - Not just deductibility, but all aspects of the tax treatment of the contributions (i.e. taxation of employer's contributions as salary to employee; taxation of employee on benefits accrued under pension plan)
- Variations
  - Limited to employees / to employee contributions / to compulsory/occupational schemes / to employers in same group
  - Time limited (E.g. Benefit limited to five years)
  - Time requirement (E.g. two year membership of plan required)
  - Only employees that are residents in the host State

# Optional clause OECD Comm. 18 §37

- Effect
  - In Case 1, Employee's tax treatment in State B (host State) should be the same as it would be if the contributions had been made to a State B pension plan
    - Not limited to residents of host State
    - Not time limited
    - Benefits not limited to those that would be available in home State
  - It solves not Case 2 (Non-Mobile Worker) because no crossing borders for employment purposes as required in Comm. Art. 18 §37 1.a)
  - It covers only situations where the pension fund is established in one State and the individual works in the other State
  - Only for existing plans

# Optional clause OECD Comm. 18 §37

- Effect
  - Equal treatment in host State (“shop-floor equality”).
    - Crossing borders may improve or worsen situation of employee depending on domestic law of host State and home State.
  - Only for pension funds the contributions of which qualify for tax relief in the home State (i.e. not for TEE/TTE-home States)
    - Shop-floor equality not achieved
  - Only if home State scheme “generally corresponds to schemes recognised in host State”

# Optional clause OECD Comm. 18 §37

- Third States
  - Optional clause proposed in Comm. Art. 18 §38
  - USA/Belgium (2006) is relatively rare extension to third State pension plans. However, third State must:
    - Be EU/EEA/NAFTA/CH
    - Provide reciprocal benefits with respect to plans in the State providing benefits under US/B treaty
    - Have adequate information exchange with the State providing the benefits under US/B treaty

# The EU solution

- EU has IORP (Institutions for Occupational Pension Provision) Directive 2003/41/EC, implemented since 23 September 2005

- Multinational employers can now centralise their pensions in a single pan-European pension fund

- 65 cases of pension funds providing cross-border services reported to exist in the EU, across 9 home States and some 18 host States (2 April 2008)

# Intra-EU contributions

- *Commission vs. Belgium*, C-522/04 of 5 July 2007 and *Commission vs. Denmark*, C-150/04 of 3 January 2007:
  - Under rules of EC Treaty EU Member States are obliged to give tax relief for pension contributions paid to pension funds in other Member States if they do so for payments to domestic funds

# OECD optional clause: EU perspective

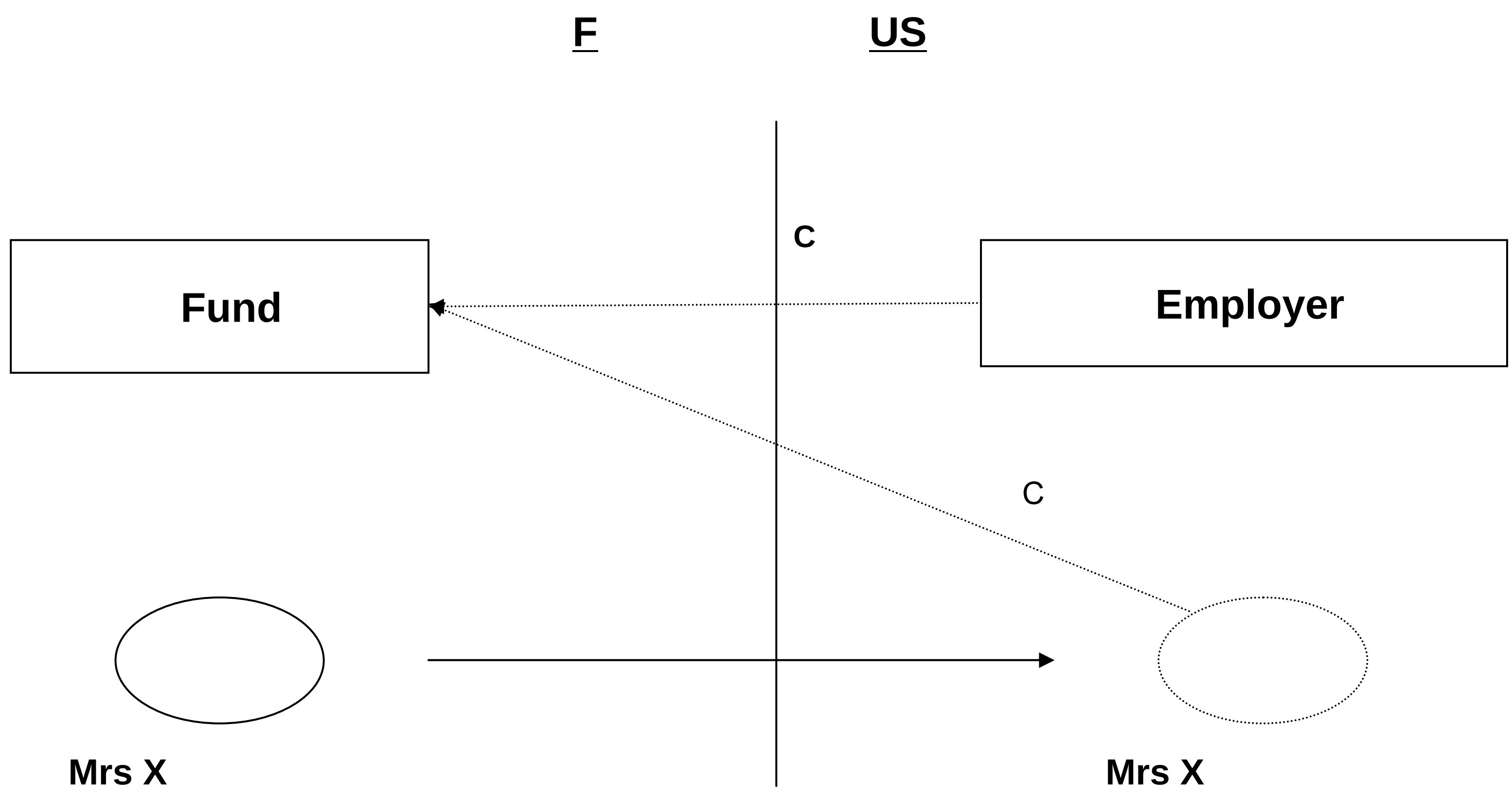
- Tax treaty clauses between EU Member States (and between EU States and third country) must be consistent with Community Law
- Discriminations and restrictions forbidden
- Comm. Art.18 §37 covers only mobile workers
- Non-mobile workers also have right of deduction of pension contributions paid to fund in other Member State

# Intra - EU contributions

- EU Commission: Principle of equal treatment says that State of deduction does not have to allow higher deduction than when paid to domestic fund ("shop-floor equality")
  - Netherlands:
    - Amount to be deducted is what would have been allowed in home State. Deduction may thus be higher than deduction to NL fund.
    - NL seem to be the only EU Member State with such a rule

- What if home State rule is less favourable than Dutch relief, (no "shop-floor equality")
  - Dutch rule may go against tax treaty, if it follows solution of OECD Optional Clause §37 or 38, if worker not coming from TEE/TTE State
  - Does Dutch rule infringe EC Treaty? ECJ generally looks at discrimination by work State, not home State

# Case 3: Pan-European pension funds / non EU member states



# Case 3: Pan-European pension funds / non EU member states

- *Facts:*

(i) Mobile worker sent from France to US
(ii) To work in US for European multinational
(iii) Contributing to pan-European pension fund in France

- No problem: Art. 18(2) US/F tax treaty (1994) follows Comm. Art. 18 §37 and provides for deduction (assuming recognition by US)

# Case 3: Pan-European pension funds / Non EU member states

- If pan-European fund in other EU State, no deduction under US/F tax treaty
- It follows Comm. Art 18 §37 not §38, which would have provided for deduction even if the fund were in a third State
- Most treaties still follow §37 and do not take into account the possibility of pan-European funds (exc. US/B treaty 2006 under certain conditions)

# Case 3: Pan-European pension funds / Non EU member states

- *Example:*
- French worker working in Australia for an EU multinational and contributing to an EU fund
  - No deduction for employer; no deduction for worker under Australian law (TTE)
  - Australia/France treaty does not help since it only provides for host State treatment

# Case 3: Pan-European pension funds / Non EU member states

- Pan-European pension funds can provide tax efficient pensions for mobile workers, not only to workers in EU but in whole world, if they are sent from an EU Member State (not TEE) and if tax treaty with third State provides for deduction
- Availability of appropriate tax treaty relief may influence expats' order of postings

# The US model tax treaty - background

- Most recent release November 15, 2006
  - There is also a technical explanation accompanying the US model treaty
- US has generally added on to OECD Model for its model, though §38 is a new concept
- Based on the 2001 precedent of the US-UK tax treaty, which greatly expanded the pension provisions of prior US tax treaties, and on the OECD model tax convention
- Since 2001, a version of this has been adopted with UK, Japan, Netherlands, Germany, Finland, Belgium and Canada

# The US model tax treaty-overview

- Pension provisions found in two Articles:
  - Article 17, Pensions, Social Security, Annuities, Alimony and Child Support (primarily dealing with taxation of payments from pensions, annuities, etc.)
  - Article 18, Pension Funds (primarily dealing with the taxation of the pension funds themselves)
- Withholding tax exemption for dividends received by pension funds (Art 10 on dividends), interest generally taxed in state of residence
- Income from real estate taxed by state where located – no treaty exception for pensions
- Plans for governmental employees covered by Article 19

# US –Model: Article 18 - contributions

- When a person participates in a pension fund resident in state 1 but is employed in state 2:
  - Contributions are excludable from taxable income of participant in state 2
  - Benefit accruals not taxable to participant
  - Contribution is deductible by employer in state 2
  - BUT any deduction or exclusion in state 2 for a participant resident of state 1 cannot exceed what it would be if pension fund were resident in state 2

# US –Model: Article 18 - contributions

- Requirements for the contribution/benefit accrual rule to apply:
  - Contributions for the individual to the pension fund in state 1 must have begun before the individual began to exercise employment in state 2
    - "Tacking on" of predecessor funds allowed
  - State 2 must agree that the pension fund corresponds to a pension fund in State 1
    - Side notes and other agreements identify corresponding plans

# US –Model: Article 18 - contributions

- US Tax provision (section 4) specifies that
  - Contributions to non-US plan for non-US employment are deductible from US income
  - Benefit accruals under non-US plan are not taxable in US
- Cannot exceed the lesser of (1) relief for contributions for US residents under corresponding US plan, or (2) non-US contribution or benefit tax limits for the non-US plan
  - Non-US plan contributions and benefits treated as US for purposes of any US plans
    - E.g., IRA deduction limits

# US –Model: Article 18 – contributions – effect of Savings Clause

- Deduction/exclusion of contribution rule exempted from Savings Clause unless person resident in the other state becomes a permanent resident or citizen of that state
  - E.g., if non-US citizen working in US contributing to non-US plan becomes a US citizen, can no longer take a US deduction for contribution to non-US plan

# Special US Internal Revenue Code rules for US deductions

- Deduction:
  - For US qualified plans
  - 404A for certain foreign plans – independent of treaty
    - Applies globally to compensation subject to US tax
    - Certain exceptions

# Cross Border
# Transfer of Pension Rights (Portability)

# Case 4: portability

- Employee switches from an employer in State A to another employer in State B
- Employee transfers pensions rights accumulated in pension scheme in State A covering 1st employment to scheme covering 2nd employment in State B
- “Exit tax” in State A while domestic transfer would have been tax free

# Optional clause OECD Comm. Art. 18 §66-68

- Commentary essentially assumes source State right to tax roll-overs (probably under Art. 15)
- Optional provision would require each State to treat a cross-border roll-over in the same way as a roll-over between domestic funds
- Accordingly, cross-border roll-over generally would be a non-taxable event in both States
- Option almost never used

# Portability under EU law

- Non-tax proposal for EU Directive on portability not yet adopted by Council and European Parliament. Portability taken out.
- Difficult to get unanimous agreement on labour law, even more so than on tax law, given co-decision procedure
- With or without Directive, EU law may oblige Member States to allow cross-border transfer, where they allow domestic transfers

## Tax infringements under EU law

- If EET Member State allows tax free domestic transfer, it cannot tax outbound transfer (*Commission vs. Belgium,* C-522/04*)*
- ETT States may wish to maintain yield tax on transferred capital.
- ETT/EET State with source tax policy may wish to maintain source tax right on future benefits or on transfer.
- No rulings yet on these cases

# Taxation of Pension Fund's Investment Income

## The issue

Foreign pension funds may be subject to higher tax in the source state than domestic funds

- Domestic pension funds are generally exempt from tax on investment income or get refund of domestic WHT
- Where domestic funds are subject to tax the tax may be lower than the tax to which foreign funds are subjected

Discrimination / no neutrality

# Optional clause OECD Comm. Art. 18 §69

- States increasingly provide source State exemption for income of pension funds
- Ensures neutrality in States that exempt the income of their own pension funds
- Avoids economic double taxation that almost certainly would otherwise arise when pension is distributed

# French court cases

- Paris Appeal Court 6-12-2007 / Conseil d'Etat 13-2-2009
- Progress, a NL pension fund, realized
  - a capital gain on French real property
  - Dividend income
  - France applied a specific WHT on the gain / dividend only targeting foreign investors
  - Similar French entities not subject to such WHT
- Court / Conseil d'Etat:
  - Discrimination on the ground of nationality (F/NL treaty similar to Art. 24 (1) OECD MC)
  - Stauffer - case

# EU solution: the principles

- EU Commission: Levying withholding taxes on outbound dividends and interest paid to pension funds, while exempting domestic funds, is forbidden discrimination. Idem where foreign funds are more heavily taxed than domestic funds

- Cases opened against 14 Member States (Cz, E, Lt, NL, PL, P, Slo, Fin, D, Est, A, Dk, I, Sw)

## EU solution: case-law

- *Denkavit*, C-170/05 of 14 December 2006 and *Amurta*, C-379/05 of 8 November 2007 clearly support Commission
- Two-State approach, i.e. credit in residence State can repair discrimination by source State. Does not apply, since pension funds often do not pay tax in residence State
- Many pension funds are in the process of claiming back unduly paid withholding taxes

# EU solution and third countries

- Art. 56 EC Treaty applies to capital movements to and from third countries
- Grandfather rule for discriminatory tax rules with third countries not applicable because not direct investment but portfolio investment
- Relevant exception: if no exchange of information is possible with third country (*Skatteverket v A*, C-101/05)

# Conclusion on third countries

- Non-EU pension funds can claim back at least WHT from :
  - EU Member States that apply EET/TEE for domestic funds
  - ETT States that apply a higher WHT on non-EU funds than on domestic funds

# Pan-European funds and LOB

- Under the LOB provision in Comm. Art. 1 §20 pension fund would qualify only if more than 50% of the beneficiaries were residents of the two Contracting States
- Most Pan-European funds could not meet that test
- Under some US treaties (e.g. US/B & US/NL), Pan-European fund might qualify if sponsored by company in same State.
- Still obstacle to Pan-European funds.

# US – Model: Article 18 – income pension funds

- If pension fund is in state 1 and participant is resident of state 2, then income of the fund is not taxed until paid to the individual "(and not transferred to another pension fund in that other state)."

- This has created confusion about whether plan-to-plan transfers or rollovers between plans of different countries is permissible
  - See US Model Technical Explanation
  - US tax authority has disallowed transfers from UK to US (IRS INFO 2008-0043), from Canada to US (IRS PLR 9833020) and US to foreign trusts not qualified under US tax law generally (including plans qualified only in Puerto Rico) (IRS Rev. Proc. 2008-40)

# US – Model: Article 18 – contributions – effect of Savings Clause

- Provision for non-taxation of pension fund income exempted from Savings Clause

# Cross-border investment issues

- Investment by pension fund in see-through entities: recipient of tax exclusion or not?
  - For example, pension exemption for French 3% tax on immovables (990D of the CGI)

# Typical investment structure

US Pension #1 US Pension #2 US Pension #3 US Pension #4
↓ ↓ ↓ ↓
Unrelated Business Income Tax Blocker (e.g., Caymans corporation)
↓
Partnership (US or UK)
↓
Funds Commun de Placement (FCP, Luxembourg, an unincorporated common ownership scheme)
↓
Holding Company(s) (Luxembourg or Malta)
↓ ↓ ↓
French Local Holding Co. German Local Holding Co. Netherlands Local Holding
↓ ↓ ↓
French immovable German immovable Netherlands immovable

# Investment issues, cont'd

- US "indicia of ownership" rule
- ERISA section 404(b) generally forbids a fiduciary of a US plan from maintaining the indicia of ownership of any assets of a plan outside the jurisdiction of the US district courts (the lowest level of federal court, as opposed to a state court)
- DOL in US issued Opinion No. 2008-04A to Northern Trust that its "Multinational Cross-Border Pooling Product" was structured to satisfy the rule

# The long reach of US ERISA

- ERISA exempts foreign plans if the plan is:
  - maintained outside of the US
  - primarily for the benefit of persons substantially all of whom are nonresident aliens
  - 409A rules are causing employers to look more closely at where plans are "maintained," particularly if there are any US citizens participating

# Allocation -
# Taxing Rights on the Pension

# Source vs. residence

- Residence State can tax on basis of net income
  - Gross withholding tax may far exceed the appropriate tax
- Residence State has burden of caring for ageing population
- Source State may have foregone significant tax while worker was earning the income
- Source State taxation difficult to administer
  - Contributions may not relate to services performed in particular country

## Case 5: From TEE/TTE to EET/ETT

- Residence State
- Worker resident in one State (e.g. TEE) contributes to pension scheme and no deductions allowed.
- Transfers residence to another State (e.g. EET) and collects pension.
- Tax treaty follows Art. 18 OECD MC

→ double taxation

# Aspects of EU law

- *Kerckhaert-Morres*, C-513/04 of 14 December 2006: ECJ seems to generally accept juridical double taxation
- According to ECJ double taxation in this case is the result of parallel exercise of fiscal sovereignty by two Member States
- The ECJ will rule again on juridical double taxation (*Damseaux,* C-128/08 & *Comm. vs. Belgium*, C-307/08)
- Member States can choose solution of Comm. Art. 18 §23 (carry-over of the exemption to the pensioner's residence State)

## Case 6: From EET/ETT to TEE/TTE

- Worker resident in one State (e.g. EET) contributes to pension scheme and contributions allowed
- Transfers residence to another State (e.g. TEE) and collects pension.
- Tax treaty follows Art. 18 OECD MC

→ double non-taxation

# Aspects of EU law / DT treaty

- Exit tax only on pension upon transfer of residence?
- Not the right solution
  - No application of treaty in good faith and violation of Art. 18 if taxing rights have been unconditionally given up to the new residence State (Belgian Supreme Court 2003)
  - Former State of residence (EU) violates EC Treaty (*Comm. v. Belgium,* C-522/04)
- Commission's Pension Taxation Communication of April 2001 (COM(2001) 214 final)
  - Some Member States have moved to source taxation, although they were generally in favour of residence taxation
- Up to Member States to resolve;
  - Other possibility would be for TEE State to make exception and tax

# Impact OECD model convention

- Modification of Art. 18 OECD MC to preserve source taxation:
  - Comm. Art. 18 §15 lists optional clauses securing exclusive of limited source taxing rights
  - "Subject to tax" rule could be used in the relevant tax treaty to prevent double non-taxation in case of transfer of residence from EET/ETT to TEE/TTE

# Case 7: source case

- If limited or exclusive taxation at source is provided then a rule identifying **“where a pension arises”** is needed in the treaty

***Possible criteria:***

(i) Where the fund is located

(ii) Where the employment has been performed

(iii) Where relief for contributions has been given

# Case 7: source case

- *Issues with source taxation:*
- No taxation of non residents in Source State
  - Court of Appeal Brussels if contributions paid by sponsors in other States
- Effective source tax requires
  - well functioning exchange of information
  - co-operation between tax authorities in several countries
  - tracking of where tax relief has been obtained and/or work has been performed which may span decades

# Source case - EU

- Source tax on pension paid to non-resident pensioner for whom pension is all or almost all of his income cannot be higher than tax on same pension paid to resident (*Turpeinen*, C-520/04 of 18 May 2008)
- Straightforward application of *Schumacker*, C-279/93 of 14 February 1995, to pensions

# General rule for when pensions taxable in US

- Inclusion in income
  - At time of payment for US qualified plans
  - At time of payment for nonqualified plans IF 409A is met (new US law in effect since 2005)
    - Numerous 409A issues for non-US plans
  - New 457A effective 2009: taxable immediately when no longer subject to substantial risk of forfeiture
    - Applies to "nonqualified deferred compensation plans" of "nonqualified entities"
    - Nonqualified entity means a foreign corporation unless substantially all (80%+) of its income is effectively connected with a U.S. trade or business or is subject to a comprehensive foreign income tax
      - Similar rule for partnerships
      - Foreign income tax qualifies as comprehensive if the person is eligible for benefits under a U.S. comprehensive income tax treaty

# Taxation of US plan distributions in the absence of a treaty

- NRA who renders personal services in the US is considered to have engaged in a US "trade or business"
  - Income derived from those services is deemed to be US-source income effectively connected with a US trade or business
- Earnings on amounts in US-based qualified plans (i.e., income, dividends, and other appreciation in value), are treated as U.S.-source income taxed at a flat rate of 30 percent
- Rules are provided for determining taxation and reporting of pension benefit from US service based on US service and earnings portion.
- Exception for US qualified plans: nontaxable if
  - (1) the recipient is a resident of a country that provides a substantially equivalent exclusion to residents and citizens of the United States; OR
  - (2) the country is a "beneficiary developing country"
  - (3) 90% or more of the employees for whom benefits are provided are US citizens or residents OR

  And

  - the benefit results from a nonresident alien's performance of services outside the United States

# US –Model: Article 17 - payments

- General rule – pension and annuities owned by a resident of a state are taxable only in that state of residence
- First exception: if "arising" in the other state, and would be tax exempt if taxpayer was a resident of that other state, then exempt in state of residence
  - For example, if Roth plan distribution would be nontaxable in US, also nontaxable if participant has become a UK resident
    - See US Model Technical Explanation, HMRC Q&As from January 2009
- Second exception: Social Security-like payments shall be taxable in the payor state (even if to a US citizen)
  - But plans of local governments, e.g., states, covered by special Article 19

# US –Model: Article 17 - payments

- Annuity (versus lump sum) is defined as stated sum paid <u>periodically</u> at <u>stated times</u> during a <u>specified number of years</u>, or <u>for life</u>, under an obligation to make the payments in return for adequate and full consideration (other than for services, to distinguish from pensions)

- Alimony taxable only in state where the payee is resident
  - Defined as periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support which payments are taxable to the recipient under the laws of the state of residence.

# US –Model: Effect of Savings Clause on Art. 17

- Savings Clause of Art. 1, Sec. 4 – What does it do?

- Tax treaty does not affect US ability to tax US citizens

- This applies to pension, annuity and alimony provisions of Art. 17
  - Does not apply to rule that payments arising in state 1 that would not be taxed to a resident in state 1, will also not be taxable if individual were resident in state 2

## US – Model Article 19 – government service

- Paragraph 2, pensions
- Governmental plans (for employees of the Federal, State and local governments) are a large part of the US pension system
- Generally taxed by payor state, unless payee becomes a national of the state of residence

# Conclusion

# The ideal cross-border pension fund and its obstacles

- Tax concerns:
  - Exempt pension fund investment
    - Can a fund satisfy the tax qualification requirements of two or more states?
  - Deduction to the employer in a state for contributions attributable to service in that state
    - Reasonably consistent with the US model tax treaty
  - No taxation until distribution, and distribution taxable only in state of residence
    - Reasonably consistent with the US model tax treaty, subject to the savings clause allowing global taxation by US of US citizens
- Social/labor law concerns (e.g., US ERISA)
  - Can local laws and funding/fiduciary rules be satisfied in two or more states by the same fund?
- Is this more feasible with a defined contribution plan?

# Prospects for cross-border pensions

- Though interest has been expressed by some at OECD, pension efforts there are currently focused on the financial crisis
- Recent creation of private sector advisory group to the IPPC may help
- FT 5 Oct 2008, quoting Mark Dawsey, Watson Wyatt:

  *"In the next 10 years cross border pensions are something every multinational sponsor will look at…. The dam is cracking."*

# Income from employment-
# stock options

# US Model: Article 14 – income from employment / stock options

- General rule is remuneration derived by a resident of a State as an employee may be taxed by the State of residence, and taxed by the other State to the extent derived from employment exercised (*i.e.*, services performed) in that other State.
  - Exception: no tax in other State where services performed if employer has no permanent establishment or residence in State where services performed and employee is in other State less than 183 days of the year.

## US Model: Article 14 – income from employment / stock options

- Art. 14 also applies to income derived from the exercise of stock options granted with respect to services performed in the host State, even if those stock options are exercised after the employee has left the source country.
- US-Canada Notes and Technical Explanation to US-UK Treaty:
  - Gain proportioned between states based on (1) number of days which the individual's principal place of employment for the employer was situated in that State divided by (2) number of days in the period on which the individual was employed by the employer

**Peter Schonewille**

peter.schonewille@ec.europ.eu

**David W. Powell**

dwp@groom.com

**Koen Van Duyse**

koen.vanduyse@tiberghien.com