

YOUR PARTNER IN A CHANGING WORLD



LANDSVERORDENING
ALGEMEEN PENSIOEN
&
AANPASSINGS-
VERORDENING

Limitations

- The below highlights:
 - Are based on the draft Landsverordening algemeen pensioen (Mandatory Pension Law, hereinafter referred to as “LAP”) and the Additional Measures as filed at Parliament per December 13, 2011
 - Do not intend to be complete on all aspects and details
- Changes in the law(s) may occur that may render the highlights invalid or incomplete
- No action should be taken based on these highlights without consulting your tax advisor first

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- Pension insured at Entrepreneurial Pension Fund
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Definitions

Definitions

- Employee
 - Resident person who has reached the age of 18, but not the pensionable age, who has passed his probation period in the employment with an Aruba employer
 - Fixed term contract, temporary contract, project based contract are all included

Definitions

- Insurer
 - Life insurance company
 - Entrepreneurial pension fund
 - APFA is not an entrepreneurial pension fund, but is treated as such
- Pension age
 - 60 years, with possibility to postpone with maximum of 10 years

Definitions

- Participant
 - Person that has closed an insurance agreement with an insurer and is the beneficiary of the agreement
 - Person as per article 1 LOP (law on pension funds)

Definitions

- Partner
 - Husband or wife
 - Person with whom the participant forms a permanent joint household
 - Notaries deed; and
 - Registered at Insurer as partner; and
 - Registered at same address as partner in Censo

Definitions

- Pensionable salary
 - Fixed income components per Wage Tax Ordinance
 - If 13th month or vacation payment is fixed (i.e. guaranteed in e.g. collective working agreement or labor agreement), these amounts form part of the pensionable salary
 - Bonuses, commissions, meals, etc. are NOT part of the pensionable salary, unless the premium agreement stipulates otherwise

Definitions

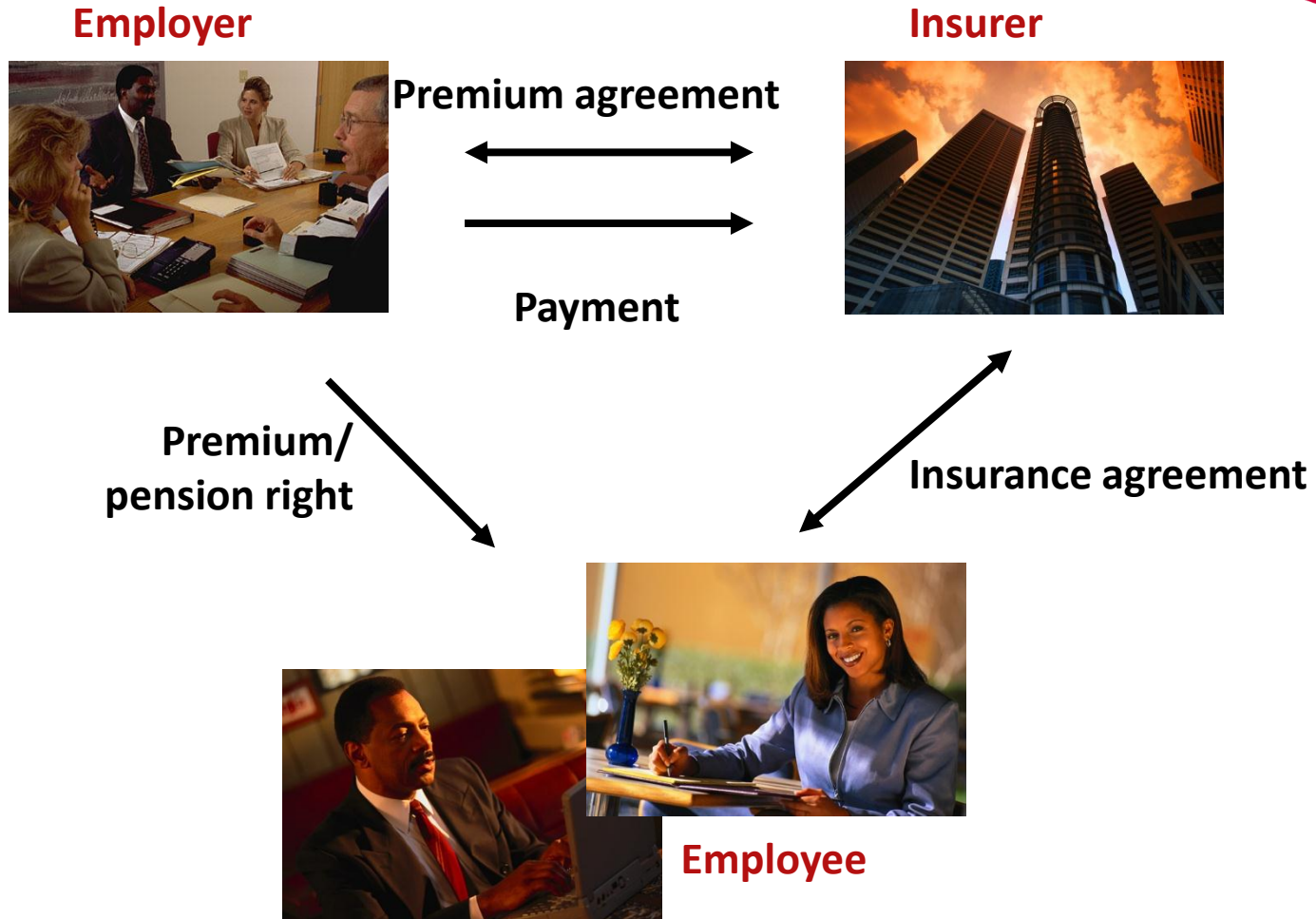
- Private pension fund
 - Entity (NV, VBA or Foundation)
 - Not exempt from corporate income tax
 - As per its goal insures (part of) a pension of a (former) substantial interest holder ($\geq 25\%$ shares) in an active company
 - If goal is not solely insurance, the entity should show the pension provision separately in its financial statements

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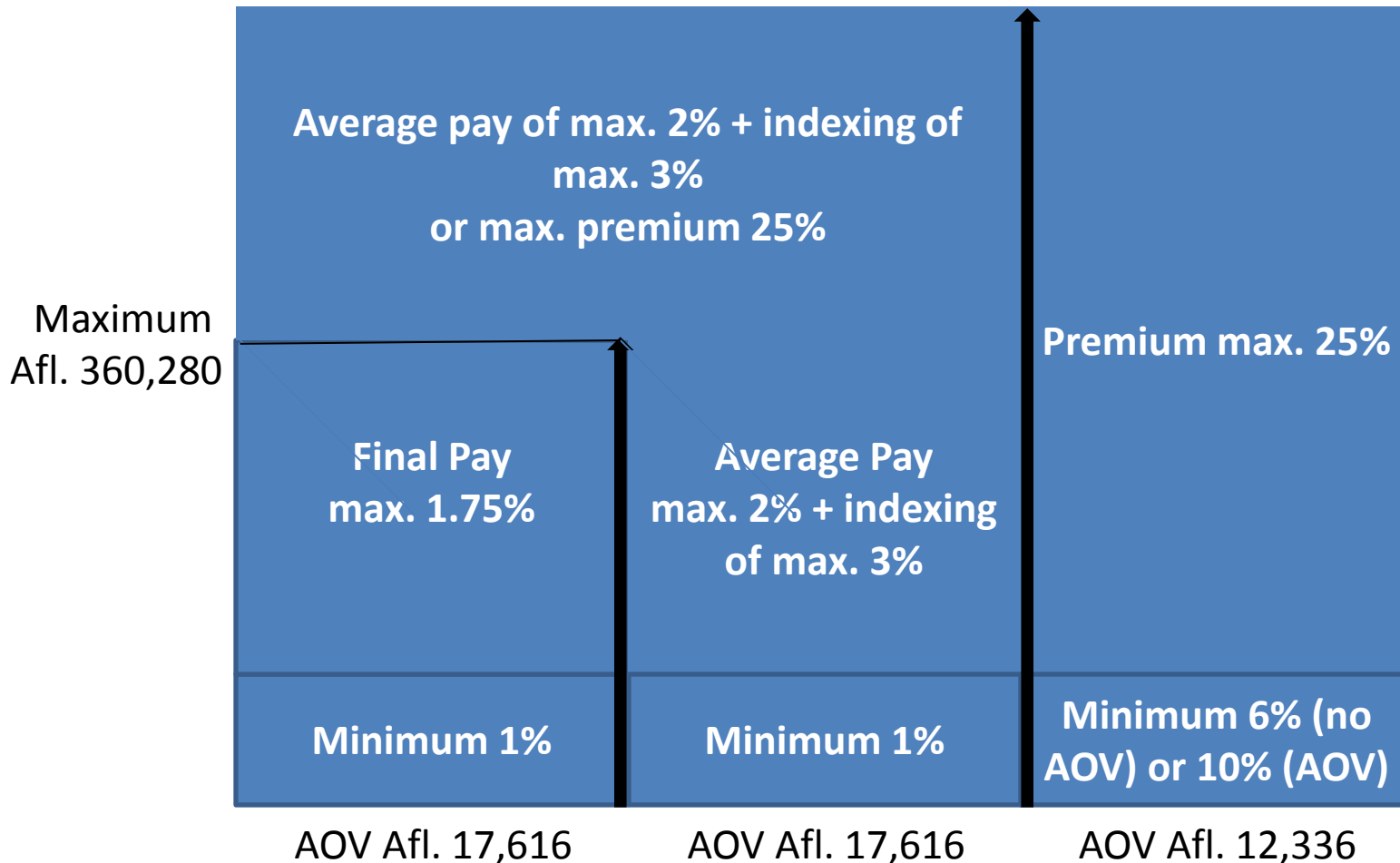


Pension insured at Insurance Company

How does the LAP work?



Allowed pension systems



Allowed pension systems

- Final pay system
 - Maximum grant 1.75% per year on average pensionable salary last three years not exceeding Afl. 360,280
 - AOV offset Afl. 17,616
 - Backservice spread out over 5 years
 - Salary exceeding Afl. 360,280 via average pay or premium system
 - No backservice as of age 55

Allowed pension systems

- Average pay system
 - Maximum grant 2% per year
 - AOV offset Afl. 17,616
 - Indexing possible
 - Wage index or, if not available, with fixed percentage not exceeding 3%
 - When pension gap exists increase maximum percentage with 20%

Allowed pension systems

- Premium system
 - Maximum pension premium 25%
 - When pension gap exists increase maximum percentage with 20%

Prohibitions

- Not allowed to:
 - Buy off pension (capital)
 - Pledge the pension (capital)
 - Embargo the pension (capital)
 - Pawn the pension (capital)
 - Include pension (capital) in bankruptcy participant

Employer

- Premium agreement between employer and insurer
 - Pensionable salary (fixed components)
 - Premium percentage/ pension grant
 - Administration costs and allocation employer/ participant
 - General terms of the insurance agreement participants



Employer

- Employer must examine best premium agreement every five years
 - 1/3 of employees can suggest switch
 - Switch to new insurer will require 2/3 of employees' approval
- Employer carries at least 50% of premium
 - Premium split employer-employee for all employees equal
 - Premium paid monthly, unless prepaid

Employee

- Insurance agreement between employee and insurer
 - Employee closes insurance agreement within three months after entering (new) employment
 - If not within 3 months, employer must close insurance agreement on behalf of employee (old age pension only)
 - Mandatory: life annuity for old age pension
 - Optional: surviving dependents' pension and/or invalidity (risk based)

Employee

- Insurance agreement between employee and insurer
 - Partner pension (risk based)
 - Partner does not work: $\geq 70\%$ expected old age pension participant & partner combined
 - Partner works: no partner pension if partner agrees
 - Upon divorce/ end joint household only rights to partner pension for period of marriage/ joint household
 - Premium free
 - To own insurance agreement

Employee

- No buy off of pension capital unless
 - Emigrated at least three years ago
 - Pension payment lower than Afl. 50 per month
 - Pension capital does not exceed Afl. 12,500 when reaching pension age (wage tax exempt)
- May delay pension age with maximum of 10 years

Employee

- When switching employer
 - Transfer of pension capital to (new) insurer of employer (maximum transfer costs Afl. 250); or
 - Premium free pension at old insurer
- Employee can, within maximum of law, contribute additional premiums

Life insurance companies

- Will:
 - In July, issue a statement to the participant of built up pension capital and contribution prior year
 - Inform the participant 6 months before reaching the pensionable age that his/ her pension capital can be used to buy a monthly life annuity
 - Inform the participant within one month after the employer is in arrears for more than 3 months



Life insurance companies

- May not:
 - Make pricing agreements with others
 - Compare its proposal with that of others
 - Make forecasts on other than guaranteed pension capitals (guaranteed return)
 - Cross sell other products
 - Charge more than Afl. 250 when transferring pension capital

Example 1 – premium grant

- Pensionable salary e.g. 30,000
- Total pension premium 18% (5,400)
- Additional (fully tax deductible) voluntary premium employee (25%-18%) 7% (2,100)
- Additional (fully tax deductible) pension gap premium (20%*25%) 5% (1,500)
- Maximum fully tax deductible premium incl. gap 30% (9,000)

Example 2 – final pay grant

- Annual grant 1.75%

• Pensionable salary	Total premium	Backservice
– Year 1 30,000	11,000	10,000
– Year 2 32,000	13,500	12,500
– Year 3 36,000	17,000	15,000

- Tax deductible premium

Year	Backservice	1	2	3	4	5	6	7
1	10,000	2,000	2,000	2,000	2,000	2,000		
2	12,500		2,500	2,500	2,500	2,500	2,500	
3	15,000			3,000	3,000	3,000	3,000	3,000
4	-				-	-	-	-
5	-					-	-	-
		2,000	4,500	7,500	7,500	7,500	5,500	3,000

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Pension insured at entrepreneurial pension fund

How does the LAP work?

Employer



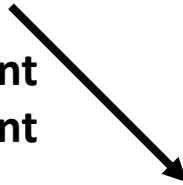
Entrepreneurial pension fund



Pension agreement

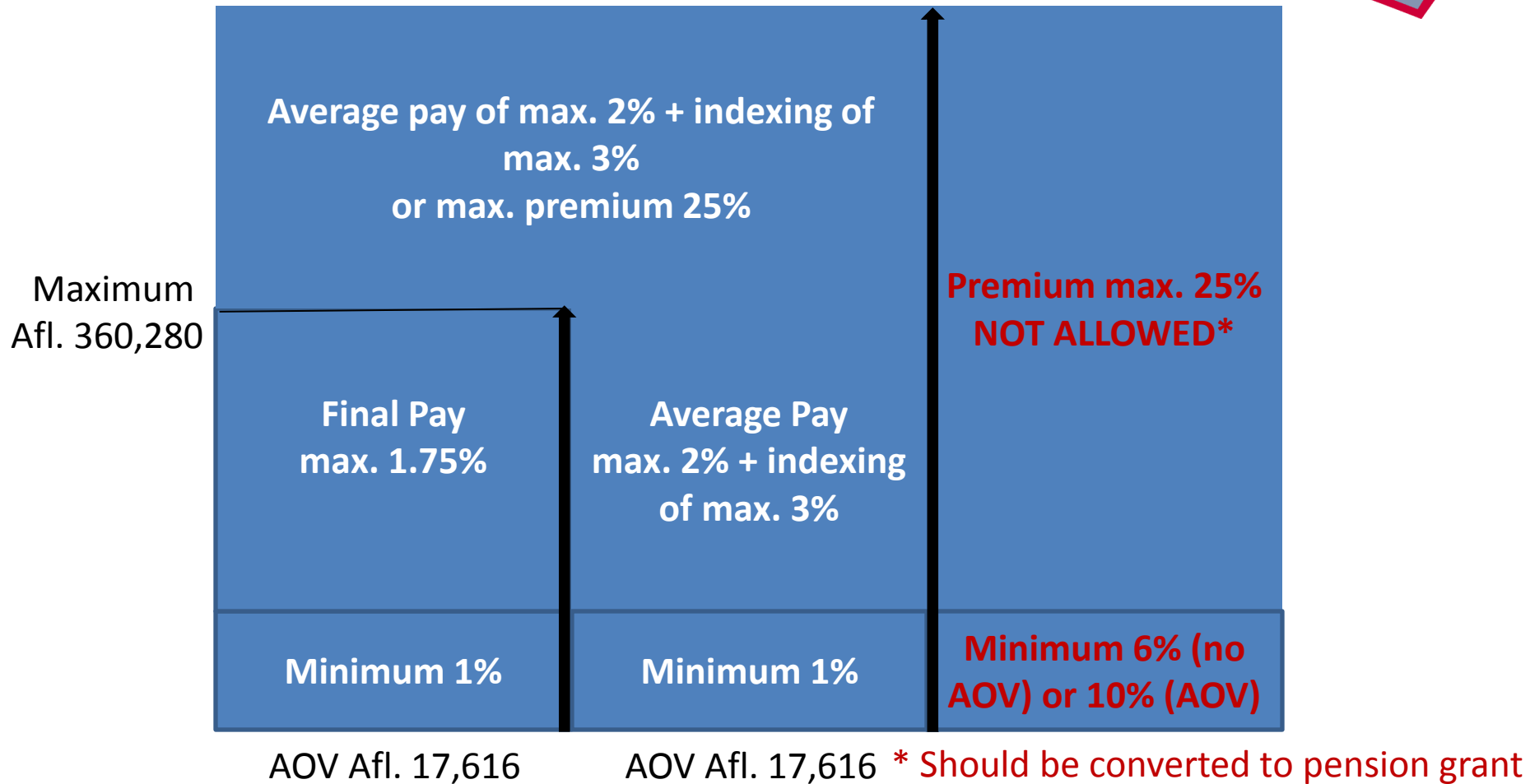


**Labor agreement
with pension grant**



Employee

Allowed pension systems



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- Employer carries at least 50% of premium
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 - Emigrated at least three years ago
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 - Pension capital does not exceed Afl. 12,500 when reaching pension age (wage tax exempt)
- May delay pension age with maximum of 10 years

Employee

- Employee can, within maximum of law, contribute additional premiums
- Additional premiums allowed with maximum of 5 years buy in

Employee

- When switching employment
 - Transfer pension capital to new insurance company or entrepreneurial pension fund allowed
 - Transfer within 4 weeks after approval (max. transfer costs Afl. 250)
 - Transfer value if < ten years participating in entrepreneurial pension fund
 - Total premium + interest -/- risk premiums
 - Transfer not allowed if participated \geq ten years in entrepreneurial pension fund

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Supervision

Government

- Supervision adherence LAP by employees tax authorities, Central Bank and/or Department of Labor
- Penalties for not complying
 - Maximum of AWG 250,000
 - Publication in newspaper
 - Imposed by Minister of Finance via specific procedure
 - Objection and appeal via LAR

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Transitional regulations

Transitional regulations

- Transitional regulation for minimum pension
 - 2012: 2% pensionable salary without AOV offset
3 1/3% pensionable salary with AOV offset
1/3% right based pension with AOV offset
 - 2013: 4% pensionable salary without AOV offset
6 2/3% pensionable salary with AOV offset
2/3% right based pension with AOV offset

Transitional regulations

- Employer
 - Individual pension agreements in line with LAP ultimately January 1, 2014
 - Collective and entrepreneurial pension agreements in line with LAP ultimately at expiration date agreement or upon change in agreement

Transitional regulations

- Employers or the directors of entrepreneurial pension agreement request approval from SIAD of the premium agreement/ pension regulations being in accordance with LAP
 - Ultimately 1/1/2014
 - Or at expiration date agreement
 - Or upon first change in agreement

Transitional regulations

- Employee
 - Insurance agreement in line with articles 5 (pension system), 6 (prohibitions) and 11 (obligation to buy annuity) ultimately January 1, 2014
 - Until December 31, 2013, or until collective pension agreement or entrepreneurial pension agreement is brought in line with LAP, old regulations Income Tax Ordinance applicable for non-qualifying individual insurance agreements or entrepreneurial pension agreements

Transitional regulations

- Built up pension rights and/or pension capital until LAP applies are grandfathered, unless incorporated into LAP pension plan
- If upon introduction of LAP an employer has both an entrepreneurial pension fund and pension agreement with insurance company, both will be grandfathered if changed to LAP requirements

Transitional regulations

- If an entrepreneurial pension fund within the Dutch Kingdom is used, this will be grandfathered in as far as the pension rights are similar to pension rights of a resident entrepreneurial pension fund

Transitional regulations

- In as far as stipulation in Pension Policy May 1993 not in conflict with LAP, they will remain applicable
- If substantial interest holder is born before 1964, the maximum pension right in a final pay system is grandfathered on 2%

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Others

Related changes

- Increase maximum amount of voluntary premium deduction from Afl. 5,000 to Afl. 10,000
 - Amounts paid under LAP decrease amount to be deducted

Next steps?

- If pension plan exists --» compliance with LAP?
 - Premium percentage/ pension right and AOV offset
 - Definition partner
 - Definition pensionable salary
 - Pensionable age

Next steps?

- If no pension plan exists
 - Employer must establish pension plan for employees
 - Determine pensionable salary
 - Form of pension grant (premium or right)
 - Other conditions
 - Close premium agreement with insurer before 1/1/2012 (or retroactively until 1/1/2012 if closed in 2012)

Next steps?

- In April 2012 employer must determine which employees have closed insurance agreements and close one for employees that did not comply
 - Old age pension only

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Smart solutions at competitive prices!