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Probationary period before granting owner/managers pension promises

The finance ministry has issued a decree calling for a probationary period of 2-3 years before promising a pension to a director who is also a shareholder.

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The finance ministry currently takes the view that a shareholder would not promise a pension to a newly employed managing director until his or her abilities to lead the enterprise to prosperity had been tried and tested. Generally speaking, a probationary period of some two to three years can be seen as adequate unless the business has only just started up. Shareholders of a new start-up company would generally need at least five years before they could be sufficiently certain that the venture was commercially viable in the long-term to grant its manager pension rights on retirement. The ministry has now issued a decree stating that pension rights granted without a suitable probationary period to a managing director who is also a shareholder (owner/manager) will generally be assumed as a grant to the shareholder, rather than to the manager. Thus, the annual pension cost as booked will be disallowed as a hidden distribution of profits. Since the pension promise was made to the beneficiary in his or her capacity as shareholder, all future costs will be disallowed, even after an adequate probationary period. The decree does, however, mention the possibility of salvaging the situation for the future by withdrawing the promise made and granting it anew once a reasonable minimum service period has been met.

The finance ministry is prepared to accept that there may be cases where managing directors have already proved themselves to their shareholders. Granting a pension promise without a probationary period in such cases would not automatically be a hidden distribution. A new company formed on merger or reconstruction with previous managers continuing in their executive functions is the example given in the decree. It does, though, require a probationary period of one year in management buy-out cases.

Keywords

owner/manager, pension promises, probationary period