



The newsletter of the European Association of Public Sector Pension Institutions

National updates



Scotland – Pension Update

On the policy front we are very much involved in the development of new schemes for new staff across all most parts of the public service.

For our teachers the intention is to introduce a new scheme in 2007 with a normal pension age (NPA) 65. The package of changes will likely include the following:

- Pension based on 1/60th of salary
- Option to commute up to 25% of pension value
- Unmarried partner benefits
- Survivor payments for life
- Two tier ill-health arrangements
- Facility to purchase additional pension
- Flexibility to combine work and retirement in specific circumstances

Alongside the new scheme for teachers it is also planned to introduce improvements to the existing scheme which will retain the NPA 60 for current members.

For our National Health Service (NHS) employees discussion are also ongoing with a view to bringing forward a new scheme for new members hopefully in 2007. The new scheme will be based on NPA 65 and possibly include:

- A career average arrangement rather than final salary
- Option to commute up to 25% of pension value
- Increasing limits on amount of pension accrued
- Other changes as described in the teachers scheme.

Changes to the existing scheme may also be considered during the discussion on the new scheme but there are no details yet. The existing scheme will retain a NPA 60.

The new schemes for Police and Fire are being introduced for all new recruits from April 2006 but existing members are generally unaffected by these reforms.

Finally on policy, I have to mention the scheme for local government staff – the Local Government Pension Scheme (Scotland). Activity has been at an exceptionally high level of late.

Editorial

Nowadays, measures to improve portability of supplementary pension rights are oftentimes discussed, not only concerning transnational/cross-border mobility but also inside a member state. In this context, the European Commission has published its proposal of a directive relating to the improvement of occupational pension rights portability which has become – particularly during the last months – subject matter of lively discussions on EU level as well as inside the different member states.

Yet, Achilles' heel is often that portability is not accompanied by fiscal rules. The different fiscal treatment of pension rights in the countries of the European Community, but sometimes even within a country, sometimes entails insuperable problems in practice. It is thus high time to look more closely at the different ways of occupational pensions taxation.

This EPB edition is therefore dedicated to the presentation of taxation rules in different countries. The reports give a first overview on basic principles as well as on current reform discussions. We will continue with this issue on the occasion of our next association meeting of which the main topic will be taxation of pension rights in Europe.

Among taxation, reforms of pension schemes as well as service improvement are always of major importance. The Scottish example gives a good impression of activities of retirement pension institutions in order to correspond to the needs of their members.

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Hagen Hügelschäffer
Original language : French

This is because of the decision to remove the infamous “rule of 85” from October 2006 due its discriminatory nature. That rule allows members to retire early through a combination of age and service. It would be true to say that “all hell broke loose” when the announcement was made in January and since then there has been media interest, union threats, legal opinions, Ministerial questions, member challenges, and basically everything that people could think of to throw at us. As it stands at present the debate is ongoing and consultation with colleagues in England and Wales will be part of the continuing saga. Happy days!

Elsewhere in the Agency there has been the usual raft of changes to introduce and routine work to process. Some of the activities requiring our attention were.

Civil partnerships

The legislation was brought forward in December 2005 and we have now started to receive some registrations. Members automatically receive cover for their partners back to 1988 but they have the option of buying prior service at reduced cost.

Taxation

The Finance Act 2004 comes into effect on 6 April and whilst the legislation allows considerable opportunity for people to save more for their retirement, our schemes at present are making very few change. However even with few changes, as administrators there are many events that we have to report to the Inland Revenue (now Her Majesties Revenue and Customs – HMRC) and other circumstances where we have to police the new rules to ensure that annual contributions and lifetime savings are within the limits.

Briefly the changes being introduced to our schemes at the moment are:

- Minimum pension age (MPA) 55 by 2010
- Increased level for trivial commutation
- Removal of scheme limit on payment into money purchase additional voluntary contributions (AVCs)
- Member allowed to take 25% of money purchase AVCs as tax free lump sum

Northern Ireland Assembly

SPPA already administers the scheme for the Scottish Parliament and from April we have contracted to take responsibility for the scheme covering the Northern Ireland Assembly. We are partly dealing with the handover arrangements. This is a small scheme with less than 200 members but our view is Northern Ireland first!

Payroll

Currently SPPA retains payroll in-house for the teachers scheme, however, from this summer we intend to bring the payroll for our NHS scheme back in-house. Work is now underway to deliver this change which we anticipate will result in considerable savings to our annual budget. The target date is mid-June.

IT

Our existing IT contract is coming to an end, and for those of you with an interest in such subjects you will wish to note that SPPA will shortly be advertising for a new provider for our pension administration. At the moment we are putting the final touches to our process mapping and system specification before we commence the procurement exercise. We hope to appoint a new provider later this year and take delivery in 2007. Initially this will be for the existing schemes but later the new schemes will be added.

All in all a very busy period with no sign that life will get any easier. At least boredom never has to be factored into our daily routine.

If anyone would like more detail on our activities please get in touch and I will try to help.

Ian Clapperton
Original language: English

National update – Germany



The taxation of supplementary pensions of the public and church sector in Germany

Introduction

In Germany, almost 5 million employees of the public and the church sector are covered by the supplementary pension schemes, being administered by the VBL for the state and regional staff and by the 24 pension institutions of AKA for the local and church employees. Furthermore, more than 2 million pensioners receive a supplementary pension beside their basic pension out of the state-run general scheme.

These figures show that questions of taxation are of crucial importance. Every modification in tax legislation related to the supplementary pensions of the public and church sector might cause a substantial shift in the fiscal income of the state. Thus, the existing taxation rules as well as the running discussions are always influenced by fiscal considerations.

Regarding the taxation of pensions, either the contributions or the later pensions are taxed in order to avoid a double taxation of contributions and pensions. In some European countries, the investment income and the capital gains are taxed as well. Thus, a specific terminology has been developed at the international level to describe the above-mentioned taxation models:

- EET– Exempt contributions, Exempt investment income and capital gains, Taxed benefits,
- ETT – Exempt contributions, Taxed investment income and capital gains, Taxed benefits,
- TEE – Taxed contributions, Exempt investment income and capital gains, Exempt benefits

According to the Communication of the European Commission of 19 April 2001: “*The elimination of tax obstacles to the cross-border provision of occupational pensions*”, the EET-system is most widespread in Europe as far as occupational schemes are concerned. 11 out of 15 (old) Member States apply the EET-taxation, whereas the remaining countries have introduced the ETT or the TEE-system.

Taxation rules in Germany

Taxation of the contributions / pensions of the supplementary pension schemes

Following the classification on the European level, the supplementary pension schemes of the public sector in Germany belong to the TEE-system but only if the scheme is a pay-as-you-go (PAYG) system. Otherwise (i.e. if the scheme is funded) the EET-rules are applicable.

This differentiation can be explained as follows: During the last reform of the taxation rules regarding pension rights in 2004, German legislation actually wanted to switch uniformly to EET-taxation as the most common system in Europe. This would have also included all pension schemes of the second pillar as well as, consequently, the supplementary pension schemes of the public and church sector.

In contrast to many other European countries, these supplementary pension schemes of the public sector are mostly financed according to the PAYG-system. In practice, this concerns 4.2 million out of 5 million employees. The contributions to PAYG-schemes have always been taxed according to the TEE-system. Thus, an immediate and complete shift from TEE- to EET-taxation, including also all employees of the public sector, would have generated considerable fiscal losses, despite of later increasing fiscal revenues since the later pensions would be completely taxed. Most likely in view of these considerations, legislation has thus decided that PAYG-systems are excluded from the EET-taxation. Therefore, the application of taxation rules (TEE or ETT) depends on the concerned schemes being either a funded (→ EET-taxation) or a PAYG-scheme (→ TEE-taxation).

Yet, it is doubtful, whether this different treatment is in accord with the (German) Constitution, according to which any different treatment is prohibited unless there is any justification.

Regarding the situation of employees, there is a great difference in tax burden being member of a scheme with TEE-taxation in comparison to those employees who are insured in a funded system. Model calculations have revealed that an "average earner" with an annual income of about 30.000 EUR has to pay up to 425 EUR more in taxes if he is insured in a "TEE-scheme". This higher burden is not compensated at a later moment through the taxation of the "EET-pensions". Generally, the level of income is higher during the phase of employment than during the period of retirement. Consequently, the total fiscal charge of pensioners is lower than that of active worker.

Furthermore, there seems to be no justification for this unequal treatment. One possible justification is that the fiscal authorities are afraid of losing too much fiscal incomes. Such a reason, however, cannot justify any unequal treatment since even if the legislator has to ascertain a sustainable budget-planning, he is not allowed to discriminate any group of persons in comparison to others. Instead, he is obliged to maintain the principle of justice, i.e. he has to share the fiscal burden across all concerned persons in order to ascertain the principle of equal treatment.

Finally, this unequal treatment cannot be justified by a potential higher security of funded schemes. Funded schemes do face risks and dangers, too, like the negative developments at the stock markets especially at the beginning of this decade. On the other hand, PAYG-systems can also be reliable and sustainable if they are seriously calculated (like, for example, in the local supplementary pension institutions in Germany where a period of more than 10 years is taken as the basis for the calculation of the contributions).

The question whether this differentiation will be maintained in the future is likely to be decided by the Constitutional Court.

Taxation of other payments to the supplementary pension schemes

Besides the problem illustrated above, there are further, quite recent decisions (September 2005 and February 2006) of the Federal Court of Finances (BFH) relating to the public sector pension schemes.

The first judgment dealt with the additional contributions paid by employers (called "*Sanierungsgelder*") to compensate higher costs due to the transition to the so-called "point-system" (see EPB n° 12 of April 2002). These additional contributions are tax-free in principle. The Federal Ministry of Finance initially wanted to link these tax-free supplementary contributions to the maintenance of the PAYG-system in order to keep the deficiency in receipts under control. In contrast to the Ministry of Finance, the BFH decided that these additional contributions are not submitted to income tax even if the PAYG-system is not maintained but replaced by a funded scheme. Its main arguments were that any payments submitted to income tax firstly needed a monetary value for the employees. Secondly, the taxed payment had to be the compensation for the job performance of the worker. None of these conditions are fulfilled by the "*Sanierungsgelder*" described above since they are only paid to compensate a deficit due to the change of the pension plan.

Another judgement of the BFH relates to supplementary contributions paid by employers, when a pension scheme has been closed and the active members are transferred to another scheme. In practice, the assets of the closed scheme are often insufficient to cover the liabilities so that the employers pay

additional contributions (often in form of a lump sum) in order to compensate the lacking difference. In contrast to the opinion of the Ministry of Finance, the BFH ruled that these payments are also free of income tax, using nearly the same justification as in the case of the “*Sanierungsgelder*”.

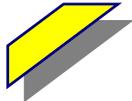
A further decision dealt with the question, if any supplementary payments are taxed, which are paid by the employer when leaving a PAYG-system (called “*Ausgleichsbetrag*” or “*Gegenwertzahlung*”). In contrast to the case described above, the concerned supplementary pension scheme is not closed. The reason for this payment is that any employer, going out of a PAYG-scheme, has generated unfunded pension rights of a considerable amount, which must be financed in the future by the remaining employers, often by means of higher contributions. In order to cover these pension rights, PAYG-schemes of the public sector demand a compensation. The Federal Court of Finances decided that these payments are not submitted to any taxation, either.

Conclusion

Questions of taxation become more and more important for the supplementary pension schemes of the public and church sector in Germany. Due to the recent judgments of the Federal Court of Finances, legislation will most likely take adequate measures to balance the implementation of these decisions on the one hand and a too extensive deficiency in receipts on the other hand.

Hagen Hügelschäffer
Original language: English

National update – Netherlands



Recent tax developments in the Netherlands

Summary:

The most important developments are:

- Reduction of tax deductibility of life annuities (3rd pillar)
- Abolition of early retirement pensions (2nd pillar)
- Raising of the pensionable age (2nd pillar)
- Introduction of a life circle provision (“*levensloop*”) (3rd pillar)
- Changing the tax treaty policy (2nd pillar).

Explanation:

- **Life annuities**

For a longer time, the space of tax deductibility of life annuities paid to insurance companies has been strongly reduced. This tendency started about 15 years ago and the government has consequently maintained it up to now.

In the early nineties, there was no limit set to tax deductibility of these products. The government assumed that there would be a natural maximum to the wish of taxpayers to buy insurance products in order to lower the tax claim. Since that showed not to be true, deductibility was consequently reduced to almost zero. The present situation is that payments for life annuities are only deductible if there is a demonstrable hole in the 2nd pillar pension.

- **Early retirement pensions, Raising of the pensionable age and Introduction of a life circle provision**

By the recent Early Retirement and Life Circle Act (“VUT, Prepensioen en Levensloop”), in force since January 1st 2006, tax facilities for early retirement pension have been abolished. Tax deductibility for both funded and pay-as-you-go early retirement pensions has been completely abolished for employees born after 1949. For elder employees, deductibility is maintained. The lowest permitted age for old age pension has been raised from 60 to 65.

With both measures, the government intends to make employees work longer in order to react on the phenomenon of the ageing population. The same intention led to the introduction of Life Circle, a tax provision introduced by the same Act.

Life Circle means fiscal facilitating of savings in order to finance a longer or shorter holiday of the employee, such as a sabbatical. Life Circle contributions must be paid to banks or insurance companies and must be put upon a blocked account. This provision should enable employees to afford a longer holiday at the peak hour of life. The aim of all this is to keep employees fit to do their jobs and keep them out of disability.

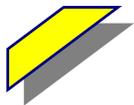
- **Tax treaty policy on EU-level**

The government is becoming more and more careful in attributing the competence to the other EU-member states to levy tax on Dutch pensions, paid to inhabitants of other states. The Netherlands asks for guarantees that a fair tax is levied (2nd pillar) or otherwise that the paying state (Netherlands) does levy a tax, too.

The reason for this policy is that the Netherlands wants to prevent Dutch pensioners to move to “tax friendly states” (for instance in Southern Europe) after having facilitated the expensive pensions of these people with Dutch tax money.

Leo Bessems
Original language: English

National update – Sweden



The taxation of pension rights in Sweden

The first pillar in Sweden

The first pillar in Sweden consist of three different components:

- An earnings related “income pension” which uses notional accounts
- An income tested “guarantee pension”
- A personal pension account, the premium pension

The earnings related “income pension”

Contributions of 16 % of pensionable income are credited the notional account. Pensionable income is defined as earnings less employee contribution of 7 %. Contributions are only levied when earnings exceed a floor of 1 749 EUR, although they are due on the whole of earnings for all people earning above the floor. There is a ceiling to benefits calculated in terms of pensionable earnings of 35 030 EUR. This corresponds to a monthly salary of 3 138 EUR before the reduction of the employee contribution of 7 %. The “income pension” can be claimed from 61.

The income tested “guarantee pension”

Elegibility for the guarantee pension will be earned with three years’ residency. Maximum pension is earned with 40 years’ residency and is reduced proportionally for shorter periods. If the “income pension” is 5 281 EUR or less, “guarantee pension” will give an additional 3 641 EUR. If the “income pension” exceeds

5 281 EUR, “guarantee pension” will be reduced. Only when “income pension” exceeds 12 880 EUR is entitlement to “guarantee pension” exhausted.

Personal pension account – the premium pension

A 2,5 % of pensionable income is paid into personal pension accounts where people have a broad choice of where these funds are invested. At retirement a public agency (PPM) is responsible for converting the accumulated balance into an annuity. Alternatively, people will be able to choose a variable annuity, where their funds continue to be invested by their chosen fund manager.

The second pillar in Sweden

The value of second pillar pension funds assets is estimated to 137 billion EUR. 81 % of these assets are externally funded through insurance contracts, 10 % are externally funded through separate pension funds institutions and 9 % financed through book provisions within sponsoring employers. The 36 billion EUR liability covering pension rights which has been accrued before 1998 in the local government and state sector, is not included in this total.

Four different collective agreements

Supplementary pension schemes in Sweden are mainly regulated through nation-wide collective agreements between the parties of the labour market. Approximately 90 % of employees are covered by different supplementary pension schemes. These pension schemes are similar to first pillar pensions in the sense that they are compulsory in the area covered by the relevant agreement.

The supplementary pension schemes in Sweden consist mainly of four different collective agreements: Avtalspension SAF/LO (private blue-collar workers), ITP (private white collar workers), KPA-KL (local government sector) and PA03 (state sector).

The collective agreement in the local government sector

A new collective agreement from 1st of January 2006 will gradually increase the significance of the defined contribution element and reduce the element of the defined benefit. The table below shows the contribution rates for the DC element and the replacement rate for the DB element, within the new and previous agreement.

Type	Incomes EUR	New agreement	Previous agreement
DC	< 35 030	4,5 %	3,5-4,5 %
DC	> 35 030	4,5 %	1-2,1 %
DB	> 35 030	55 %*	62,5 %*
DB	> 93 488	31,25 %*	27,5 %*
DB	> 140 232	0 %	0 %

* replacement rates within the DB-schemes

The contribution to the DC element is paid as a premium by the employer to a life insurance company chosen by the employee. The DB element can be externally funded through insurance contracts or financed through book provisions within sponsoring employers.

Tax treatment of pensions

Taxation of contributions

The pension taxation system in Sweden, according to the OECD typology, is generally referred to as an ETT system. Contributions made by employers to second pillar pension schemes is a cost which is tax

deductible if contributions are made to life insurance, pension fund or financed by book reserves which are guaranteed by credit insurance or a municipal or state guarantee.

Quantitative restrictions

The maximum tax deductible contribution for an employer to a second pillar pension scheme is 35 % of the yearly salary, not exceeding, at present, 41 700 EUR. In certain cases the maximum tax deduction can be increased, for example, if the contribution is made in purpose to strengthen an earlier insufficient pension entitlement or made in purpose of implementing an early retirement policy in order to accomplish a reduced workforce.

The maximum tax deductible contribution to a third pillar pension scheme is at present 2 085 EUR or, if the income of work exceeds 41 700 EUR, 5 % of the income, not exceeding 4 170 EUR.

Qualitative restrictions

There are also qualitative restrictions which have to be met by the pension scheme in order to gain a tax deduction. The minimum age to withdraw a pension benefit must not be lower than 55 years and the pension must be paid as an annuity during a minimum period of five years. The annuity paid can be increased during this period but not the opposite. The circle of beneficiaries, to which the amount could be paid if the main beneficiary dies, is also restricted.

Taxation of capital gains

Life insurance companies and pension funds which operate in Sweden pay a capital gains tax on the assets they manage for the beneficiary. In calculating the capital gains tax, a standardized method is used (capital basis multiplied by the average governmental lending rate during the calendar year immediately preceding the taxation year). If the contribution is made within the quantitative and qualitative restrictions, the yield arrived at is taxed at 15 percent. Otherwise, the yield arrived at is taxed at 27 %.

Taxation of benefits at withdrawal

Pension benefits from life insurance, pension funds or book reserves are subject to income tax at withdrawal.

Pay-roll taxes and special pay-roll taxes

Social contributions take the form of pay-roll taxes which are paid by the employer and are calculated on the basis of salary plus any other taxable benefits provided to the employee. The pay-roll tax rate is 32,46 %. Special pay-roll tax, amongst else, is levied on contributions to second pillar pension schemes. The tax rate of special pay-roll tax is 24,26 % and is also paid by the employer. The question whether pay-roll tax (32,46 %) should be regarded as a wage tax or a fee to the social security system is to some extent political. At least it seems uncontroversial to regard pay-roll tax levied on income above the social security ceiling as a tax.

The differences in tax rates between salary and contributions to second pillar pension schemes has created an incentive to transform salary to pension, reducing the pay-roll tax for the employer from 32,46 to 24,26 %. If the salary exceeds the social security ceiling, contributions made to second pillar pensions will not affect income related benefits from the social security system.

Snapshots from the current discussion in Sweden regarding pension taxation

Establishment within Sweden to grant tax deduction for contributions

Sweden has intervened in the current process in the EC-court between the Commission and Denmark (C150/04) where the question has been raised whether a system for life insurance and pensions under which tax deductions and tax exemptions for payments are granted only for payments under contracts entered into pension institutions established in Denmark, whereas no such tax relief is granted for

payments pursuant to contracts entered into with pension institutions established in other member states. Both Sweden and Denmark refer to the public interest grounds, which were established in the Bachman case (effective fiscal supervision and coherence of the tax system), to preserve the requirement of establishment. Of the total amount of assets in second pillar pension schemes (1300 billion SEK), approximately 540 billions constitutes assets corresponding to the deferred taxation. To secure taxation of these assets is considered of vital interest for the Swedish government. A ruling from the EC-court is expected in the autumn 2006.

The ceiling for employers tax deductible contributions

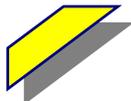
The current ceiling for the employer to make tax deductible contributions to second pillar pension schemes (35 % of yearly salary) is to some extent regarded as too generous if the objective is to establish a sufficient pension. If compared to the amount of contribution to first pillar pension (18,5 %) the ceiling, as the current discussion goes, could be lowered to less than 30 %. This will have the effect of putting pressure to transform DB schemes to DC schemes and thereby increase labor mobility. At present however there is no formal proposal from the government to lower the ceiling for tax deductible employer contributions.

Taxation on capital gains

Until the end of 1980, capital gains in second and third pillar pension schemes were not taxed. Due to a tax reform in the beginning of 1990, tax neutrality between various means of savings was emphasized by the legislator and taxation of capital gains in second and third pillar pension was introduced in 1991. But the legislator came to the conclusion that capital gains in pension schemes should be taxed at a lower rate in comparison with other savings, for example private equity. The main reason for this departure from the principle of neutrality was the need to stimulate long-term savings which at that moment in Sweden were at a low level. Today, keeping tax incentives, for example a lower taxation on capital gains on pensions, in order to stimulate long-term savings is to some extent questioned in Sweden. On the other hand, there is a growing awareness of the impact of mobility which puts a restriction on how much it is possible to depart from an EU-standard regarding taxation on capital gains.

Johan Sjöström
Original language: English

National update



Spain – old age pensions and basic rules of taxation

The First Pillar, the “Social Security General Scheme” (Regimen General de la Seguridad Social, or RGSS) is a pure pay-as-you-go scheme. Contributions are a fixed proportion of covered earnings - defined as total earnings, payments for overtime work excluded-, although limited to a range between a floor and a ceiling that vary among broadly defined professional categories. Up to date, eleven categories are distinguished, each one of them with its own ceiling and floor for covered earnings.

The Government secures the first pillar, which is public and compulsory. An average wage earning worker's income represents between 75% - 85% of the last salary.

The Government and the Trade Unions and the Entrepreneurs Association in the second place deal with the development and reform of the First and Second Pillar (Toledo Pact). Trade Unions and the Entrepreneurs implement the Second Pillar while the Government supervises its running.

The Second pillar has been implemented in the main private corporations, in the Public Sector and for some particular high-ranked managers. Occupational State Pension Plans are compulsory or voluntary, depending on collective wage agreements. This system is basically an occupational defined contribution scheme (a small number of companies have defined benefit pension plans).

The Third Pillar is voluntary. Due to the replacement rate between 75% - 85%, the average worker receives from Social Security, the Third Pillar is mainly considered as a fiscal asset in order to save taxes and not as a part of the later old-age income.

According to the classification on the European level, the supplementary pension Scheme is an EET Fiscal System: Exempt contributions, Exempt investment incomes and capital gains and Taxed benefits. In the Social Security, the contributions are exempted and the benefits are taxed.

The current RGSS contribution rate is 28.3 percent, 23.6 percent paid by the employer and the remaining 4.7 percent by the employee.

The employer's and the personal contribution (in both cases) are limited to the level of 8,000 euros, but it can be increased by 1,250 euros per year after the age of 52 up to a maximum limit of 24,250 euros, with an age limit in retirement. When personal contribution exceeds the deduction ceiling, there is a period of 5 years to deduce the amount over 8,000 euros.

The present situation allows for companies to include the contribution as an operating expense and to deduct 10 % of the employer's contributions from the corporate tax.

Usually, the Social Security pays a life annuity benefit. In the Supplementary Scheme it is possible to elect an annuity or lump sum after retirement as long as at this time there is a period of two years from the first contribution (invalidity excepted). There is a period of 6 months to carry out procedures.

Yearly annuity income from the Social Security and from the Supplementary Scheme is considered as personal income, while lump sum benefits deduce 40% of the amount, leaving the remaining 60% to increase the personal income.

In the future, the Social Security system will change according to the recent social evolutions. When Social Security system reduces the benefits the Second Pillar will be even more necessary, and it is expected that there will be more differences between the Second and the Third pillar due to modifications of the fiscal system.

The Government is working on a new Tax Law Draft which is supposed will be finished by summer. At this moment the amendments presentation period is still open and it would be confusing to translate the negotiations in advance.

Amaia Aldasoro
Original Language: English

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