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# Questions concerning Swiss old-age pension

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***As the New Zealand CSA delegate, I am often approached with questions concerning the Swiss Old-Age Pension, especially in relation to problems with the unjust Social Security Act Sections 187-191 (formerly Section 70), and about the frequently occurring unlawful practices by the Ministry of Social Development (MSD). With this article I hope to shed some light on this sad chapter.***

### Introduction

The Swiss Old-Age Pension is not paid out automatically when you reach the statutory retirement age. You should apply at least three months prior to reaching the pension age.

Currently the statutory old age for women is 64 years of age and for men 65 years of age. The Old-Age Pension can be drawn up to two years prior to reaching the statutory age with reduction. It can also be postponed up to five years with increase in payment. If you wish to draw the pension one or two years in advance, you need to apply at least three months in advance of when you wish to receive it. If you wish to postpone your pension beyond the statutory age you will also need to inform the CCO prior to reaching the statutory pension age. The applicable form can be downloaded from the website of the CCO: https://bit.ly/3cXLOS0

Every year the Swiss Compensation Office (CCO) sends a life and civil status certificate to all Old-Age Pension recipients. This is to check that beneficiaries are still alive. The blank life certificate can also be downloaded on https://bit.ly/3f5RTNZ, completed and then returned via email to: oaie@zas.admin.ch

Swiss Old-Age Pension needs to be declared in the New Zealand tax return. It is regarded as income and has not been taxed in Switzerland.

### Spousal Provision/Deduction

The Spousal Provision will be gone on November 9, 2020. This means that pensioners whose partner receives an overseas pension higher than the rate of NZ Super will no longer be disadvantaged. Their NZ Super will not be reduced any more by the 'excess' of their partner's overseas pension.

### Swiss Old-Age Pension compulsory contribution

New Zealand deducts the overseas pension (compulsory portion), on the basis of the Social Security Act Sections 187-191 (formerly Section 70) from the New Zealand Superannuation (NZS). In some cases, this leads to a total loss of their NZS benefit. This illegal practice does not only affect Swiss pensioners but equally pensioners of many other countries. There are over 100,000 pensioners in New Zealand that lose their privately paid pension (compulsory contribution) or part of the pension this way.

At the moment there seems to be little to no movement from any of the political parties in New Zealand to change this law. It is astonishing that the current coalition government, especially our present prime minister and deputy prime minister, while in opposition, condemned this deduction as illegal, even calling it a *"breach of human rights"* on several occasions. Now in government, they seem to have forgotten everything said and promised.

The Swiss Embassy and I, together with other affected parties and other Embassies in New Zealand, are continuously and relentlessly working behind the scenes at various private and political levels. It is our goal to abolish Sections 187-191 completely. To get the New Zealand government to change the law, we must apply pressure and expose to the world this unfair practice.

### Irregularities by MSD/WINZ

In recent times it has become more and more apparent that the Ministry of Social Development (MSD) has not upheld the law and has acted illegally and randomly.

In one case a pensioner was derived of his voluntary part of the Old-Age Pension for five years when he, by coincident, found out that this practise was illegal. The MSD had to pay back $40,000 plus an ex-gratia payment of $5000. According to the Ombudsman's findings, the pensioner should have been informed about the deductible portion (voluntary pension contribution) without having to specifically apply for deduction (Ombudsmen Act 1975, case number 429683).

I know of two cases where the MSD suddenly stopped deducting illegally confiscated portions of the Swiss Pension after the pension recipient started asking questions and queried the MSD decisions.

In another case a pensioner fought the MSD successfully. They had incurred a huge 'debt' due to MSD not deducting an overseas pension for years despite knowing about it, and then demanding the 'over-payment' to be paid back. Thanks to their legal knowledge (one is a lawyer) they were able to have the debt amounting to $76,000 waved. They found that Clause 208 – *'Debt caused wholly or partially by errors to which debtors did not intentionally contribute'* – in the Regulations for the Social Security Act 2018, which basically says that if MSD makes a significant mistake, they cannot claim a debt. The couple also presented them a litany of mistakes made right through the process. Clearly, MSD didn't have an appetite for a high court challenge with a lawyer who knew what he was doing!

The main point is that MSD cannot recover a debt that was caused wholly or partly by a significant error by MSD and to which the debtor (pensioner) didn't contribute intentionally.

If you think this has happened to you, the first thing to do is request your entire file from MSD and compare it to your records. The state of the file and its contents will give an indication right away if the MSD processes have been sloppy or not.

There are many ways in which MSD might have made mistakes and caused the situation. The most commonly made mistakes are:

- You have declared the overseas pension but WINZ didn't deduct it from your NZ Super, then notices it with a huge delay and asks the money back.
- MSD has not deducted your overseas pension or the correct amount because they have lost your paperwork. Happens frequently.
- Miscommunication between WINZ (where you apply for NZ Super) and MSD. Example: MSD tells you, you will receive one amount and WINZ comes up with a different figure. We hear it all the time from pensioners who have been given a hard time by MSD staff.
- MSD have refunded you off-the-top deductions made over a certain period and then demanded the money back.
- The review contains errors of fact.

However, do not even think of appealing or fight against an MSD decision on the re-payment of debt or other issues, if you have deceived MSD and not declared an overseas pension in your NZ Super application!

**News from Swiss Abroad** | Nachrichten aus der Schweiz im Ausland

# rules in New Zealand still linger

**How to get the Swiss Old-Age Pension reimbursed**

New Zealander having worked for a period of time in Switzerland which automatically requires compulsory contribution to the OASI during that time, are entitled to the reimbursement of their contributions as Switzerland has no Social Security Agreement with New Zealand, whereas a Swiss citizen (NZ Passport holder or Permanent Resident) living in New Zealand will only be able to receive a monthly pension and are not entitled to the reimbursement of any of their voluntary or compulsory contributions.

As a New Zealander, when filling out the application form for New Zealand Super (NZS) you will also need to declare that you have worked in Switzerland. Thereafter, a declaration form is sent to you by WINZ which requires you to contact and send to the CCO in Geneva. They in turn will advise you on how much you are entitled to. The whole sum (one lump payment) will be sent to you as soon as the CCO have all the bank details and the paperwork is completed.

This will all take some time. During this period, you will already have received and benefited from some of the fortnightly NZS payments. When the payment sum from the OASI arrives in NZ you will need to advise MSD/WINZ and then a deduction from your NZS will take place. However, because the payment is a single lump sum, it can only be deducted from one instalment of your NZS which is from one fortnightly payment. This deduction is a one off!! The worst-case scenario is that you lose one fortnightly NZS payment.

The alternative to the procedure mentioned above is, to write to the CCO requesting the whole sum due (one lump payment) prior to reaching the eligible NZS age. The CCO will advise you on what documentation they require to prove that you are no longer in Switzerland and have returned permanently to New Zealand. This way you are able to save one fortnightly NZS pay-out.

Irrelevant of which way you go about it, as your overseas pension is paid at a gross rate, you may need to declare this payment in your tax return.

**Where to get help?**

The Swiss Embassy in New Zealand has created a special page where all the relevant information concerning the subject of Swiss Old-Age Pension, specifically focused for pensioners in New Zealand are available. The link is: https://bit.ly/3ktA51Z

As your elected delegate to the Council of Swiss Abroad (CSA) representing New Zealand/Oceania, I am also available if you require further information:

Telephone: 06 753 3441
Email: peter.ehrler@swissonline.ch

**Peter Ehrler**
*Elected Council Member of the Swiss Abroad representing New Zealand*

**Further links:** Central Compensation Office (CCO) Switzerland: https://bit.ly/35qCiEm
To find out your estimated Swiss Old-Age Pension, a request can be filled:
www.zas.admin.ch/zas/en/home/services-en-ligne/particuliers/extrait-du-compte-individuel.html

## Nachrichten aus der Schweiz

Swiss voters have accepted a referendum that gives fathers two weeks of paternity leave, with around 60% voting yes on the initiative. Switzerland was one of the only European countries where paternity leave is not guaranteed.

Swiss voters also agreed for the government to spend CHF ₣6 billion on updating fighter aircraft.

They rejected changes to the hunting law that would have allowed townships to better control wolf populations and also rejected an increase to the maximum childcare tax deduction.

Locally, Geneva voted to implement a minimum wage of CHF ₣23 per hour.

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