TC04060

Appeal number: TC/2013/03809

Income Tax – Pension Special Annual Allowance Charge (2010-11) –one-off contribution to appellant's SIPP over Special Annual Allowance Charge limit- no dispute that resulting tax charge correct at law – whether appellant's genuine belief at time of making payment that payment was within allowance and complexity of law meant tax could be relieved – no – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

CATHERINE VINE LOTT **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE SWAMI RAGHAVAN
MRS CAROL DEBELL

Sitting in public at 45 Bedford Square, London on 24 July 2014

The Appellant appeared in person along with her husband.

John Corbett, HMRC officer appeared for the Respondents.

DECISION

Introduction

1. This appeal concerns the tax treatment of a payment of £30,000 made by the appellant to her Self-invested personal pension (SIPP) on 6 January 2011 and in particular whether this resulted in her becoming liable to the Special Annual Allowance tax charge in operation for the tax year 2010-11. The charge was calculated in the amount of £3,000.

2. The appellant argues the tax rules were confusing (that HMRC admit as much) and there was nothing on the tax return that flagged how the amount was to be treated. No advice was given. She says she could have invested the additional amounts in the following tax years. HMRC say the charge was correctly applied and calculated.

Law

3. The appeal relates to the Special Annual Allowance Charge under Schedule 35 Finance Act 2009 ("FA 2009").

4. A Special Annual Allowance Charge is made where a "high income individual" as defined in Schedule 35 is a member of one or more registered pension schemes and their "total adjusted pension amount" for the tax year exceeds the Special Annual Allowance. The appellant's total adjusted pension amount is further defined in paragraphs 3 to 6 of the Schedule but as this amount (£30,000 for 2010-11) is not in issue in this appeal we do not set out those provisions here.

5. Under paragraph 1(4) Schedule 35 the Special Annual Allowance was £20,000. This was subject to paragraph 17 of the schedule which allowed a higher amount of annual allowance depending on the mean of specified kinds of contributions made in previous years with a ceiling of £30,000. Paragraph 17 provides as follows:

> **Increased special annual allowance**
>
> 17—
>
> (1) This paragraph has effect where the mean of the infrequent money purchase contributions amount for the tax years 2006–07, 2007–08 and 2008–09 ("the relevant mean") exceeds £20,000.
>
> (2) Where the relevant mean is less than £30,000, this Schedule has effect as if the references in paragraph 1(4) and (5) to £20,000 were instead to the relevant mean.
>
> (3) Where the relevant mean is £30,000 or more, this Schedule has effect as if those references were instead to £30,000.
>
> (4) The "infrequent money purchase contributions amount" for a tax year is the aggregate of any relevant contributions paid in the tax year—
>
> (a) under money purchase arrangements, other than cash balance arrangements, under registered pension schemes, and

(b) less frequently than on a quarterly basis;

(and so is nil if no such contributions were so paid).

(5) But if the infrequent money purchase contributions amount for a tax year, would otherwise be greater than the annual allowance for the tax year, it is to be taken to be the annual allowance for the tax year.

(6) "Relevant contributions" means contributions which are—

(a) relievable pension contributions by or on behalf of the individual, or

(b) contributions paid by an employer of the individual in respect of the individual.

6. Under paragraph 1(8) of Schedule 35 the Special Annual Allowance charge is charged on the amount by which the total adjusted pension input amount exceeds the Special Annual Allowance. (This would be £10,000 where the payment was £30,000 and the Special Annual Allowance was £20,000).

7. Under paragraph 1(8)(c) of Schedule 35, to the extent the amount by which the chargeable amount when added to (in summary) net income exceeds the higher rate limit, the percentage rate by which the charge is calculated is 30%.

Evidence

8. The appellant gave oral evidence upon which HMRC and the Tribunal had the opportunity to ask questions. We also had before us a bundle of documents containing copies of correspondence between the parties and between HMRC and the pension scheme of the appellant's former employer, together with the appellant's tax return and Helpsheet 345 for tax year 2010-11, a document produced by HMRC which included information on tax charges on any excess of the Special Annual Allowance.

Facts

9. The appellant does not dispute that on the facts her contribution fell within the legislation and that it was subject to the Special Annual Allowance charge under the legislation. There was nothing on the information before us to suggest that the appellant was incorrect in this view.

10. In 2010-11 the appellant was a "high income individual" within the meaning of the legislation.

11. On 6 January 2011, the appellant invested £30,000 in her Hargreaves Lansdown Vantage SIPP. This was a registered pension scheme for the purposes of the tax legislation.

12. The appellant had worked for Legal & General and had been a member of the Legal & General defined benefit pension scheme for 32 years. She left Legal & General in 2008-09 and had 9 months gardening leave. She ceased pensionable service there with effect from 31 August 2009. In each of the years 2006-07, 2007-08,

2008-09 and 2009-10 she made employee contributions. The annual sum of contributions in each of these years did not exceed £20,000. The appellant told us that Legal & General made an ad hoc payment to the scheme in 2009-10 but was not able to assist us on the amount of the payment.

Procedural background

13. The appellant filed her 2010-11 return on 19 August 2011. A notice of enquiry was issued on 1 August 2012. Following a closure notice issued on 10 April 2013, HMRC amended the appellant's assessment. On the same date it offered the appellant the option of a review and also stated the appellant could appeal to the Tribunal. The appellant appealed to HMRC on 11 May 2013 in an e-mail setting out her reasons for disputing the assessment and asking for information about appealing to the Tribunal. HMRC replied on 21 May 2013 stating that it did not consider the appellant had supplied valid grounds. The appellant's appeal was notified to the Tribunal on 30 May 2013.

The parties' arguments

14. The appellant says she accepts the rules were breached and wished to apologise for that. She had no intention to breach the rules. She had assumed defined benefit schemes were included within the scope of the increased Special Annual Allowance provisions. The rules were unclear and even the HMRC officers handling her case had found them confusing and had had to get in touch with specialists. If she had not invested the pension amount in 2010-11 the way the rules for subsequent years changed would have allowed her to have used the unused allowance in 2010-11 to make additional contributions in the following years. In her grounds of appeal she mentioned that the pensions regulator was a risk based regulator but she did not pursue this argument at the hearing.

15. HMRC's argument in essence is that the tax is correctly charged and calculated under the law and they have no ability to reduce or remove the tax liability which is due.

Discussion

16. There is no dispute between the parties in this case that the relevant tax law was correctly applied and on the evidence before us we are satisfied it was correctly applied.

17. Neither the appellant's contributions nor any contribution paid by Legal & General to the Legal & General defined benefit scheme would count as contributions under money purchase arrangements in order to qualify under the increased special allowance provisions in paragraph 17 of Schedule 35 FA 2009. The accrual of benefits under such a defined benefit scheme would also not fall under this provision.

18. Even if the employee contributions the appellant is recorded by Legal & General as having made did count we would not be able to find that these amounts of

contribution were paid less frequently than quarterly (so as to count as "infrequent money purchase contributions" under the legislation). Further, even if they were sufficiently infrequent, their amounts would not result in a "relevant mean" which was higher than £20,000 and would not therefore increase the Special Annual Allowance above that amount. The "relevant mean" under the legislation does not include payments made in 2009-10 so payments made in that year are not relevant.

19. There is also no dispute between the parties that the charge has been correctly calculated at £3000 being 30% of £10,000. Given the appellant's net income for the purposes of the legislation, 30% is the appropriate rate of charge and this is charged on all of the difference between the amount of pension input (£30,000) and the Special Annual Allowance (£20,000).

20. We accept Mrs Vine Lott's evidence that she had genuinely thought she could put £30,000 into her SIPP without incurring a Special Annual Allowance Charge because she thought that her Legal and General defined benefit scheme gave rise to contributions which would count for the purposes of the rules relating to the increased annual allowance. We also accept she spoke with financial advisers through her work in that industry who led her to believe that what she was doing would not result in a charge.

21. It was apparent to us that being made subject to the charge, when the appellant had thought she would not be subject to it and the way the appellant feels the enquiry and appeal have been handled by HMRC have caused the appellant some emotional upset. We emphasise the fact, as we hope was made clear at the hearing, that no allegation is being made that the appellant has behaved in any kind of culpable or underhand way. She put money into her SIPP thinking it would be treated for tax purposes in a certain way but which proved to be incorrect. HMRC has not charged any penalty and issues of culpability are not before us. The question is simply one of whether the liability was correctly charged or not. The issues raised by the parties on the level of disclosure in the return and the help and guidance in relation to filling out the return are not relevant to this issue.

22. Unfortunately the appellant's belief and the advice she received did not coincide with the position at law. While we accept she made some efforts to establish what the tax impact of the payment to her SIPP would be and genuinely thought she would not be subject to the Special Annual Allowance Charge this is to no avail on the issue of what the correct tax liability is. Further, while we appreciate the appellant feels it galling to know that if the excess of £10,000 over £20,000 had not been paid in 2010-11 it could have been paid in later years using a carry forward of unused allowances from that year this does not alter the tax treatment of the payment that was in fact made in 2010-11.

23. Our remit in this appeal is limited to determining whether the appellant has been correctly charged by the amended assessment under appeal as a matter of law.

24. Where the assessment is correct under the law we have no discretion to disapply it because of an honest belief by the taxpayer that the position was otherwise, or

because the law is complicated, or because it is felt that there was insufficient guidance as to how to apply it. It is irrelevant whether HMRC staff may have thought that the law was confusing or complex. The law applies nevertheless. These kinds of matters (together with any issues the appellant has had with the way HMRC have handled her case) if they are to be pursued are ones that may be pursued through alternative routes, such as feedback to HMRC, complaints processes, and through representations to government and law-makers.

25. The amount of £3,000 in respect of Special Annual allowance charge was correctly charged and calculated. HMRC's amended assessment is upheld and the appellant's appeal is accordingly dismissed.

26. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

SWAMI RAGHAVAN
TRIBUNAL JUDGE

RELEASE DATE: 8 October 2014