Sackers extra

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S07

Abbreviations commonly used in 7 Days

Alert/News: Sackers Extra publications (available from the client area of our website or from your usual contact)

DWP: Department for Work and Pensions
HMRC: HM Revenue & Customs
PPF: Pension Protection Fund

ACTUARIAL PROFESSION

Corporate Plan

The Actuarial Profession has published its Corporate Plan for 2010/11. Its three strategic aims are:

- be a world class member service organisation;
- build a quality framework which promotes public confidence in the work of actuaries;
- enhance the profession's reputation in traditional areas and build it in non-traditional areas.

HM REVENUE & CUSTOMS

New contracted-out guidance

HMRC has published new contracted-out guidance booklets. The new booklets replace the existing versions.

PENSION PROTECTION FUND

PPF Bulletin

The PPF has published its latest bulletin. This rounds up PPF news from the past couple of months.

CASES

Fryer v HMRC (First-tier tribunal: Tax, 17 February 2010)

Facts

Mrs Arnold was born on 8 September 1942.

On 5 August 1995, she declared a trust over any pension plan policy taken out with National Provident Institution. The trust was a discretionary trust for a class of beneficiaries which included her children.

On 6 November 1995, Mrs Arnold took out a policy. Under its terms:

- Mrs Arnold could take her retirement benefits at any time between her 50th and 75th birthdays;

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- if she died before taking her retirement benefits then the value of the assured and additional benefits passed in accordance with the instructions of Mrs Arnold's legal representatives or to the trustees of any trust of the benefits; and
- her "normal retirement date" was 8 September 2002.

On or around 15 April 2002, Mrs Arnold was diagnosed with an advanced cancer. She died on 30 July 2003 without having taken the retirement benefits available under the policy.

On 15 February 2007, HMRC issued notices of determination under section 221 of the Inheritance Tax Act 1984 ("IHTA") stating that Mrs Arnold had made a disposition for the purposes of section 3(3) of the IHTA by deferring her benefits under the policy at normal retirement date.

Section 3(3) of the IHTA

Under section 3(3), where the value of a person's estate is diminished and another's increased by virtue of their omission to exercise a right they are treated as making a disposition at the time (or latest time) they could have done so, unless it can be shown that the omission was not deliberate. The value of the disposition is the amount by which the estate is reduced.

Decision

The judge found that the requirements of section 3(3) were met as:

- there was no evidence presented to court to indicate that Mrs Arnold's omission to exercise her rights under the policy was not deliberate;
- the value of her estate had diminished as a result of her omission – the whole of the policy's value disappeared from it;
- the value of the trust increased by virtue of this omission – had she taken her retirement benefits the trust would have received nothing on her death.

The court considered whether the disposition fell within the exemption to section 3(3) as a disposition not intended to confer a gratuitous benefit. It found that it did not. In creating a trust Mrs Arnold must have intended to pass on the benefit of any lump sum and the fact that she may have had other reasons for not taking her retirement benefits did not negate this intention.

There was some discussion of the concessionary treatment applied, in certain circumstances, by the Capital Taxes Office (CTO) of HMRC. This is set out in HMRC guidance. It was explained that the majority of pension arrangements are not affected by section 3(3) of the IHTA but that the CTO would look closely at arrangements where:

- the policyholder became aware that they were suffering from a terminal illness or was in such poor health that his or her life was uninsurable; and
- at or after that time took certain actions or deferred the date for taking retirement benefits.

None of the circumstances mentioned by the CTO as indicators it would not pursue a claim were relevant to this case.

Comment

This case serves as an important reminder of the potential application of the IHTA to pension arrangements.

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The case concerned the HMRC guidance pre-6 April 2006, but the guidance on which the decision was taken is still valid as HMRC have confirmed it remains in force. The guidance summarises the HMRC policy not to apply IHT on deferred pension funds, unless the person deliberately denied themselves a pension in order to avoid paying IHT (in practice, HMRC had concluded there was no liability to IHT if the pension fund member survived for two years after the decision to defer).

It is possible this decision could be seen as precedent which could be applied more generally, so that any decision to defer a pension will be regarded as IHT avoidance. We hope that clarification of the guidance by HMRC will be forthcoming and until this time persons in a similar position to Mrs Arnold should be encouraged to seek financial advice to determine if their deferred pension pots will be subject to IHT.

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