

Upper Tribunal decides that tax relief will only be available on monetary pension contributions

Article By:

Financial Services Practice Group Squire Patton Boggs

Earlier in May, HM Revenue & Customs successfully appealed against a First-tier Tribunal decision that Sippchoice Ltd was entitled to income tax relief at source in relation to its self-invested personal pension scheme (“**SIPP**”) contributions. The *Revenue and Customs Commissioners v Sippchoice Ltd [2020] UKUT 149 (TCC)* decision means that tax relief will only be available on pension contributions made in cash, and not for other types of assets.

Background

Prior to 2016, SIPP and small self-administered scheme (“**SSAS**”) providers regularly offered tax relief on non-cash pension contributions such as property assets and shares. Towards the end of 2016, however, HMRC started to refuse tax relief on these in-specie contributions. As such, the current case arose as a challenge to this, progressing from the First Tax Tribunal (“**FTT**”) through to the Upper Tribunal.

In *Revenue and Customs Commissioners v Sippchoice Ltd*, four members of the SIPP had made contributions by transferring shares in companies to the SIPP. As a result of these transactions, one member, “C”, had contributed additional funds to the value of £0.03. At first judgment, the FTT held that the four members had contracted with Sippchoice Ltd to pay particular sums of money to the SIPP and so their subsequent transfer of shares was in satisfaction of those money debts. It further held that the “contributions paid” expression in s.188(1) Finance Act 2004 (the “**Act**”) could cover the transfer of assets in satisfaction of a debt. Therefore, the FTT judged that Sippchoice Ltd was entitled to income tax relief in this case.

The Upper Tribunal – HMRC Argument

Appealing the FTT decision, HMRC argued that the expression “contributions paid” in s188(1) of the Act gave relief for money payments only. It could not cover the transfers of assets. HMRC further submitted that the FTT had erred in law by concluding that the four members had entered into a binding contract which obliged them to pay monies to their SIPP and/ or erred in law in determining the terms of such contract.

The Upper Tribunal – Judgment

HMRC's appeal was allowed. In making its decision the Upper Tribunal determined:

1. The meaning of “contributions paid” in s.188(1) of the Act was restricted to contributions of money. It would make no sense to extend this relief to shares and there would be no provision for valuing such shares.
2. An agreement to accept something other than money as performance of an obligation to pay in money did not convert the transfer of shares or other assets into a payment in money.
3. There was no debt as the form used to make a contribution to the SIPP stated that the member would transfer an asset and not a monetary payment. The member had never promised and was therefore never obliged to make a monetary payment to Sippchoice Ltd.

Comments

This judgment will disappoint many people who had successfully claimed relief from HMRC on in specie contributions such as property and shares, including those within the pensions industry who have facilitated customer tax relief claims on non-cash assets in the past. Many have urged HMRC to show leniency in response to this decision as some estimates suggest that millions of pounds of tax relief could now be recovered by HMRC. HMRC, however, is yet to confirm whether it will pursue the recovery of its previous tax relief payments. With Sippchoice considering whether to appeal the decision, it will be interesting to see whether this case progresses any further and whether this decision will be reversed again.

This article was authored by trainee solicitors Bethany Bloor and Mariko Yanagisawa

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