Case study: Pension

TRUSTEES' INADEQUATE ADVICE LEADS TO ADDITIONAL TAX CHARGES

Themes: Pension plan; rights of beneficiaries; role and responsibilities of trustee; tax relief; tax-free plan withdrawals; economic loss caused by investor's loss of tax relief.

This complaint relates to a complainant incurring tax charges when his trustee neglected to recommend an appropriate pension plan structure or correctly advise of possible tax implications.

Mr Y retired in 2013 and set up a pension plan in the form of a trust and discussed this with a trustee. Nearly six months later, Mr Y contacted the trustee as he had not received any further communication. The trustee set up a meeting and the recorded recommendation indicated that Mr Y wanted to set up the structure with approximately £100,000 and to later transfer other pension plans into the same structure. The trustee recommended a structure and noted that Mr Y wanted to receive full tax relief on this amount. Mr Y signed the recommendation confirming he understood the contents and transferred approximately £100,000 into the trust. In 2018, Mr Y transferred further funds from existing pensions to the trust. Mr Y then withdrew approximately £35,000, representing 30% after investment gains of the amount in the investments, which was the maximum tax-free withdrawal amount permitted. Unfortunately, Mr Y had to pay the full taxable amount as he had neglected to apply for the tax relief with the relevant tax authorities. Mr Y made a complaint to the trustee as he believed the tax relief was automatic and stated that he was entitled to tax relief on the lump sum withdrawal, as he could have backdated a tax relief claim for up to three years in order to claim it. The trustee rejected Mr Y's complaint and he referred it to CIFO.

CIFO investigated and noted that the tax relief on Mr Y's pension contributions were paid by way of reducing the tax due on income earned from employment when that income was paid into a pension plan. As the trustee was aware that Mr Y had retired and had made a lump sum transfer into the trust, they ought to have known the structure would not allow the tax benefits Mr Y believed he would receive. CIFO also investigated whether Mr Y had obtained tax relief on unused allowances from previous years. However, the trustee held no information regarding the source of Mr Y's contributions and CIFO concluded that, on that basis, it would have been inappropriate for them to suggest the trust structure they recommended to Mr Y. CIFO also concluded that, as the trustee was aware of the need for Mr Y to apply for the tax relief, they should have informed him of this.

CIFO upheld the complaint. Because Mr Y's losses depended on what he would have done if he had been properly advised they could not be assessed accurately, but were estimated to be between £14,000 and £20,000. CIFO recommended the trustee compensate Mr Y £17,000 for the tax losses he had incurred. That was the mid-point between the amount Mr Y could have saved if he had taken the necessary steps to apply for and had received the tax relief or rebate, and the figure Mr Y could have saved if he had kept the funds where they were. Both parties accepted the recommendation.