

Pensions: In specie contributions (Lecture B1263 – 8.45 minutes)

Tax relief for pension contributions

The legislation on tax relief for registered pension schemes (FA 2004, Pt 4, Ch 4) states (at FA 2004, s 188(1)):

‘188 Relief for contributions

(1) An individual who is an active member of a registered pension scheme is entitled to relief under this section in respect of relievable pension contributions paid during a tax year if the individual is a relevant UK individual for that year.’

HMRC considers that ‘paid’ in this context generally means that contributions to the registered pension scheme must be a monetary amount, such as cash, cheque, direct debit, or bank transfer.

In specie contributions

However, HMRC’s guidance in its Pensions Tax manual (at PTM042100) broadly states that in certain circumstances it is possible for pension contribution involving an asset to retain its monetary form for tax purposes. Unfortunately, HMRC’s guidance on this point in PTM042100 has been the cause of some confusion and dispute with HMRC.

In *Revenue and Customs v Sippchoice Ltd* [2020] UKUT 149 (TCC), a pension scheme administrator company claimed income tax relief at source in respect of a net contribution of £68,324 made by an individual (C) to a self-invested pension plan (SIPP) in March 2016. HMRC refused the claim. The point in dispute was whether the contributions made by C to the SIPP were ‘paid’ (within FA 2004, s 188(1)) and therefore qualified for tax relief.

The Upper Tribunal (UT) accepted that, when viewed in isolation, ‘paid’ was broad enough to encompass non-monetary payments. However, the UT concluded that the expression ‘contributions paid’ in FA 2004, 188(1) was restricted to contributions of money. As ‘contributions paid’ in section 188(1) meant ‘paid in money’, it couldn’t include settlement by a transfer of non-monetary assets, even if the transfer was made in satisfaction of an earlier obligation to contribute the money. Tax relief was therefore denied.

HMRC: “We told you so! “

In HMRC’s Pension Schemes Newsletter 126 (December 2020), HMRC stated that it was ‘clarifying’ its ‘long-standing approach’ on in specie pension contributions following *Sippchoice*. HMRC acknowledged that its guidance in PTM042100 had ‘created some uncertainty’, and stated:

‘In light of the UT’s comments, we’ve clarified the “Giving effect to cash contributions” guidance at PTM042100 to try to help customers better understand HMRC’s long-standing approach to pension contributions made pursuant to a contractual offset agreement. This is a clarification and HMRC’s position remains unchanged.’

HMRC’s amended guidance at PTM042100 affirms that contributions to a registered pension scheme by a member or an employer must be a monetary amount, and that where an asset is transferred to a registered pension scheme in satisfaction of an earlier obligation to contribute money, the

resulting contribution is not a monetary amount and therefore the requirements for tax relief are not met.

However, where a contribution obligation exists and the pension scheme has separately agreed to purchase an asset from the scheme member (or employer) for consideration, the parties may enter into a contractual offset agreement in relation to the payment of the contribution and the asset sale consideration. HMRC acknowledges that 'in certain circumstances' it is possible for a contribution effected in this way to retain its monetary form for tax relief purposes.

HMRC's current guidance states:

'For a contribution to retain its monetary form, there must be:

- a clear obligation on the contributing party to pay a contribution of a specified monetary sum, say, £10,000. This needs to create a recoverable debt obligation;
- a separate agreement between the scheme trustees and the contributing party to sell an asset to the scheme for market value consideration, and
- a separate agreement whereby the scheme trustees and the contributing party agree that the cash contribution debt may be offset against the consideration payable for the asset.'

Where are we now?

Whether HMRC's amended guidance at PTM042100 is clarification or possibly just setting more onerous requirements, Sippchoice has at least resulted in more specific instructions on how pension contributions and arrangements involving assets can be undertaken in a way capable of obtaining tax relief.

Contributed by Mark McLaughlin