There is a glimmer of hope for the taxpayer, for whom a few pounds paid by a mistake can result in tens of thousands of pounds in tax. In the Hymanson case a taxpayer won what might at the start have seemed a weak case and, to its credit, HMRC appears to recognise that injustices should be remedied and confirmed its decision not to appeal against the decision. The case was about the protection of a lifetime allowance (LTA) but its ramifications might have a far wider reach.

protection against LTA charge

Taxpayers' existing rights on the introduction and each change of the LTA can be protected to some extent against tax charges. For a table of the protections that have been made available, see my New Year 2017 update at this link: www.law-office.co.uk/art_pension_scheme_tax_allowances.htm.

By the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011, SI 2011/1752, reg 9, which were the relevant regulations in Mr Hymanson's case, an individual to whom a certificate of protection has been issued must, within 90 days of the occurrence, inform HMRC when a paragraph 14(4) event had occurred, ie an event, including a benefit accrual, described in the FA 2011, sch 18 para 14(4). By reg 11 HMRC may, but is not obliged to, revoke a certificate if it has reason to believe that a paragraph 14(4) event has occurred.

the Hymanson decision

Mr Hymanson, who had a protection certificate, was confused about the advice he had received from his actuary and mistakenly believed that he did not need to cancel standing orders by which he paid contribution to three pension plans. It confused him that his company was permitted to pay rent to one of his schemes. When he disclosed this to his actuary, the latter reported it to HMRC, which revoked Mr Human's certificate. Mr Hyman appealed against the HMRC's decision. His appeal was heard by the First-tier Tribunal (Tax Chamber) in Hymanson v HMRC [2018] UKFTT 667 (TC), and the judgement was released on 13 November 2018.

The judge found:

(a) My Hymans' mistake was "was a genuine conscious belief that it would be acceptable to continue making the standing order payments to the pension schemes"; (69 (in the judgment))

(b) the consequence of the mistake "is clearly a totally disproportionate loss of tax"; (73)

(c) "if Mr Hymanson were to take his case to the High Court then they would issue an order for rescission of these additional contributions because of his mistaken belief as to the tax consequences of the payments" (74) and in view of the seriousness of the consequences, as said in Pitt v Holt, [2013] UKSC 26, "it would be unconscionable, or unjust, to leave the mistake uncorrected. The court may and must form a judgment about the justice of the case." (61).

(d) the maxim "that which should be done should be treated as having been done" led to the position in Lober v HMRC [2015] UKUT 152, which the judge in that case summarised as "Thus although the FTT did not itself have power to order rectification, it could determine that if rectification would be granted by a court who does have jurisdiction to grant it, Mr Lobler's tax position would follow as if such rectification had been granted." (78)

Roderick Ramage
BSc(Econ) solicitor
authorised and regulated by the Solicitors' Regulation Authority number 231800
Copehale, Coppenhall, Stafford, ST18 9BW
01785-223030, roderick.ramage@law-office.co.uk, www.law-office.co.uk

(e) It would be "well within HMRC's gift" to assure the pension provider that a return of contributions would not be treated as unauthorised payments; (86) [This would also be so under the genuine error principle: see my Summer 2018 update at www.law-office.co.uk/art_genuine_errors_180730.htm.] and

(f) HRMC's decision to revoke Mr Hymans' certificate was unreasonable because it had not considered the possibility that the payments of the contributions could be rescinded; (92)

as a result of which

(g) he directed HMRC to issue a new certificate. (95)

other scenarios

The essential point, underlying both the genuine error principle and the Hymanson decision, is that, if, because of a mistake or lack of knowledge through no fault of the taxpayer, there is no contract or intention on his part and it would be unconscionable for him to be held liable for the consequences, the mistake should be rescinded, and the tax should follow the rectified situation. In the case of an LTA certificate the payment of a trivial contribution to a pension scheme would result it the entire loss of the LTA protection. Mr Hymanson's case was about contributions paid by existing standing orders. In another case, the mistake could be the automatic enrolment of a taxpayer into a pension scheme and his failure to opt-out, because he was never notified of the enrolment and had no means of knowing of it until after the expiry of the opt-out period.

The Hymanson decision could apply to other circumstances. Suppose an employer was ill-informed about the forthcoming money purchase flexibilities brought into effect on 6 April 2015 and, before that date, agreed to permit an employee to start to draw his DB pension, while remaining an employee, and to apply part of his DC pension fund as a tax free lump sum. The employer mistakenly required the employee to apply the balance of his DC fund in the purchase of an annuity or to take it as an unauthorised member payment subject to tax, which the employee did after 6 April 2015, without being given an explanation of the change in the law permitting flexible draw-down. The employer then permitted the employee to continue to pay contributions to the DC scheme, which resulted in tax charges on the excess of his contribution over his reduced annual allowance.

The following passages in the Hymanson judgment, adapted to such circumstances as the above, illustrate how the judgment might be applied.

(a) Mr [Smith's] mistake was "was a genuine conscious belief that [he was required to draw-down the whole of the uncrystallised part of his DC fund subject to tax or to suffer increased tax on it]" (69 (in the judgment));

(b) the consequence of the mistake "is clearly a totally disproportionate loss of tax "(73);

(c) "if Mr [Smith] were to take his case to the High Court then they would issue an order for rescission of [the draw-down of the balance of his DC fund] because of his mistaken belief as to [his draw-down obligation and] the tax consequences [~~of the payments~~]" (74) and in view of the seriousness of the consequences, as said in Pitt v Holt, [2013] UKSC 26, "it would be unconscionable, or unjust, to leave the mistake uncorrected. The court may and must form a judgment about the justice of the case." (61).

etc.

It will be interesting to see how far the Hymanson decision will be applied.

END