unauthorised payments

The Finance Act 2004 divides payments and events treated as payments by registered pension schemes into authorised and unauthorised payments and imposes unauthorised payment tax charges on the latter, payable by the member or the employer: Finance Act 2004 s160 (Payments by registered pension schemes) and s208 (Unauthorised payments charge). The tax is a flat rate 40% of the value of the unauthorised payment plus, in some circumstances, a 15% surcharge: ib s209 (Unauthorised payments surcharge). If the unauthorised payments reach a set amount in a set period, a scheme sanction charge is levied on the scheme administrator of 40% of the payment, which can be reduced to 15% if the unauthorised payment charge has been paid: ib s239 (Scheme sanction charge).

HMRC becomes aware of unauthorised payments and other matters, because the Registered Pension Schemes (Provision of Information) Regulations 2006, made under the FA 2004, s251 (Information: general requirements), requires the scheme administrator to provide an event report in respect of reportable events, including unauthorised payments.

genuine error

The principle originated in a note of less than half a page in HMRC's Pension Tax Simplification Newsletter 19 (30 September 2006) that certain payments of less than £250 made in error would not be reportable in an event report or in the taxpayer's self-assessment form.

The principle has been expanded and explained in more detail and is now published in the Pensions Tax Manual. HMRC's manuals for internal guidance are published on-line and include the Pensions Tax Manual. In PTM 01000, HMRC explains that the PTM is written to help HMRC staff as well as assisting customers and their advisors. The manuals are no more than HMRC's understanding of the law and guidance on how HMRC can be expected to apply it. Although HMRC does not express it in this way, the conditions relating to payments made in genuine error, if met, operate in effect, as if the payments were not made. The general principle of genuine error is stated in PTM146100 as follows.

> An inadvertent payment made in the following circumstances will not be an unauthorised payment:
>
> - the payment is made in genuine error, such that there was no intention to make a payment to that extent or at all, and
> - the erroneous payment is spotted by someone involved with the management of the scheme (or the recipient of the payment or the recipient's adviser might have brought the matter to the attention of the scheme managers), and
> - the error is rectified as soon as reasonably possible.
>
> There is no requirement for the scheme administrator to report a payment made in these circumstances as an unauthorised payment, as the payment is not an unauthorised payment for the purpose of the tax rules relating to registered pension schemes.

The guidance in PTM146100 to 146800 (now about fifteen A4 pages) contains examples of circumstances in which the principle applies, which one might assume are no more than examples and not intended to be exhaustive. The circumstances are not now limited to the original payments below £250 and include other unauthorised payments, contributions which are not contributions and some

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

payments when a scheme is treated as having made a payment in connection with an investment acquired with scheme funds

some of the examples of the principle in the PTM

If a member's bank continues to pay contributions after the member has cancelled them, the payments are outside the member's control and never intended to be made. Therefore they are not contributions to the scheme and the refund of them is not an unauthorised member payment. In one case a member was taken to hospital seriously ill before he could even contact his bank, but HMRC, which had been notified of the continuing contributions, accepted that this was a genuine error and the member did not lose his lifetime allowance protection.

A member's maximum tax free pension commencement lump sum is £25,000, but by an accidental transposition of the figures the scheme pays £52,000. If the member repays the excess £27,000 to the scheme immediately, the excess payment by the scheme is not an unauthorised payment.

If a new employee had no intention of joining the employer's pension scheme or his application to join had been rejected, but the employer deducts his contribution from his first salary payment, the member queries it and the scheme returns the employer's and the member's contributions, the returned contributions are not unauthorised payments.

At the end of a member's employment his and the employer's contributions should stop, but if the employer cannot change its banking arrangement to prevent the payment of the contributions that would have been paid to the scheme if the employment had not ended, the return of those payments by the scheme would not be unauthorised.

In compliance with the FA 2004 s179 (Authorised employer loan), the scheme employer pays interest and instalments of capital on a loan from the scheme by standing order, but, when the loan has been discharged, the bank does not stop the standing order. When the mistake is discovered, the excess payments repaid by scheme are not unauthorised payments.

If the scheme arranges to borrow money on terms which comply with the FA 2004, s182 (Unauthorised borrowing: money purchase arrangements), but the bank mistakenly deposits a larger amount, in excess of the permitted limit, in the scheme's account, and the excess borrowing is rectified as soon as possible, the excess deposit is not an unauthorised borrowing and the repayment to the bank (PTM 146800 mistakenly says "to the employer"!) is not an unauthorised payment.

payments outside the principle

Not every unauthorised payment made as a result of a genuine error can be disregarded.

If by a genuine error a member's pension commencement lump sum is not paid within the twelve months following the date on which he becomes to it and the linked pension, it ceases to be a pension commencement lump sum and it an unauthorised payment, because it is known that it would be unauthorised when actually paid.

If contributions are paid on bad advice and are refunded on a recommendation by the Financial or the Pensions Ombudsman, the refund is an unauthorised payment, unless it is either a refund of excess contributions lump sum or a short service refund lump sum, but there would be no scheme sanction charge if made pursuant to an Ombudsman's order. This exception from the genuine error principle seems anomalous, as it appears to penalise a victim of mis-selling.

END