

OLD SQUARE
TAX CHAMBERS

Pension commencement lump sums

Philip Simpson K.C., C.T.A.

philipsimpson@15oldsquare.co.uk

Rebecca Sheldon

rebeccasheldon@15oldsquare.co.uk

Old Square Tax
Chambers

15 Old Square, Lincoln's
Inn

London WC2A 3UE

Tel: (020) 7242 2744

www.taxchambers.co.uk

OLD SQUARE
TAX CHAMBERS

Pensions: unauthorised payments

Rebecca Sheldon

rebeccasheldon@15oldsquare.co.uk

Old Square Tax
Chambers
15 Old Square, Lincoln's
Inn
London WC2A 3UE
Tel: (020) 7242 2744

www.taxchambers.co.uk

Background

- Introduction and legislative framework

The meaning of an 'authorised' payment

- Section 164 FA 2004
- Sections 165-169 and 171
- Employer payments: 175, 176-180

The meaning of 'unauthorised' payments

- Section 160 FA 2004
- Section 172-174A
- Section 181

What is a payment?

- Section 161 FA 2004
- *Clark v HMRC* [2020] EWCA Civ 204

Case law examples

- *Dalriada v HMRC* [2023] UKFTT 314 (TC)
- *Danvers v HMRC* [2016] UKUT 569 (TCC)

Tax charges on unauthorised payments

- Section 208
- Section 209
- Section 210
- Section 213
- Section 239

Good faith discharges

- Section 268
- Section 269
- What is a valid good faith discharge?
- *HMRC v Bella Figura Limited* [2021] Pens. L.R.1
- What happened in *Dalriada*?
- *Curtis v Revenue and Customs Commissioners* [2022] UKFTT 172 (TC)
- *O'Mara v HMRC* [2017] UKFTT 91 (TC) between 150-153

OLD SQUARE
TAX CHAMBERS

Pension commencement lump sums

Philip Simpson K.C., C.T.A.

philipsimpson@15oldsquare.co.uk

Old Square Tax Chambers
15 Old Square, Lincoln's Inn
London WC2A 3UE
Tel: (020) 7242 2744

www.taxchambers.co.uk

Pension commencement lump sums

- Schedule 29 FA04
- New ITEPA03 Chapter 15A
- Provisions re overseas pensions
- New regime >
 - pension commencement lump sums
 - pension commencement excess lump sums

Pension commencement lump sums

- Conditions > para 1 of Schedule 29 FA04
 - member entitled to it in connection with becoming entitled to relevant pension
 - paid when all / part of member's lump sum allowance / lump sum death benefit allowance available
 - within period from 6 months before to 1 year after becomes entitled to it
 - paid when member has reached normal minimum retirement age / ill-health condition satisfied
 - exclusions re artificial step to increase tax-free amount
- If more than 'permitted maximum', not PCLS

Permitted maximum

- Lower of three amounts:
 - one third of value of money / assets applied at same time for providing income
 - available lump sum allowance
 - available lump sum death benefit allowance

Available lump sum allowance

- New section 637P ITEPA03 > lump sum allowance is £268,275 – no provisions for e.g. inflationary increases – fixed at one-quarter of lifetime allowance (now abolished)
- How much is ‘available’?
- Broadly, deduct non-taxable amount of any previous lump sums
- ‘Non-taxable amount’ > amount exempt from tax by virtue of Chapter 15A ITEPA03

Lump sums from QROPS / QNUPS

- Lump sums from QROPS / QNUPS taxed under ITEPA03 Part 9 Chapter 4 – taxation of pensions paid by persons outside UK to UK residents
- Lump sums taxed under sections 574 / 574A >
 - if not registered pension scheme, not relevant non-UK scheme (broadly, scheme where contributions have received migrant member relief), or EFRBS, and lump sum not within disguised remuneration provisions; or
 - if relevant non-UK scheme, member payment provisions in Sch 34 FA04 don't apply – broadly, if recipient UK resident, where migrant member relief received / relief under double taxation convention

Lump sums from QROPS / QNUPS (2)

- Amount taxed – various deductions, including amount that would be tax-free were it received under registered pension scheme
- Importance > this provision is only about calculating taxable amount – does not grant an exemption – anyway not in Chapter 15A
- Consequence?
- Same point in relation to calculating maximum by reference to lump sum and death benefit allowance > new section 637R
ITEPA03 fixed at £1,073,100 (same as previous lifetime allowance)

PCLS income tax

- Income tax > new section 637A ITEPA03
- Exempt from income tax if under registered pension scheme

Pension commencement excess lump sum

- Authorised payment > no unauthorised payment charge / surcharge / scheme sanction charge
- Conditions to meet > new para 3A in Sch 29 FA04
- Some same as for PCLS >
 - member entitled to it in connection with becoming entitled to relevant pension
 - within period from 6 months before to 1 year after becomes entitled to it
 - paid when member has reached normal minimum retirement age / ill-health condition satisfied

Lump sum allowance etc.

- None of lump sum allowance / lump sum death benefit allowance available
 - a) if single payment, then set PCLS against allowances first
 - b) gap between PCLS and PCLES – trap to be aware of
 - c) previous payments by QROPS / QNUPS

Excluded payments

- If already authorised payment by virtue of lump sum rule
- If lump sum under collective money purchase scheme drawdown pension

Income tax

- PCELS taxed as taxable pension income > new section 637B
ITEPA03