

**Appellant -V- Comptroller of Taxes**  
**Tax Payment by Scheme Manager & 2019 Deferred Liability**  
**September 2022**

*For the purpose of anonymisation, the true name of any individual or company mentioned below has been fictionalized.*

**OVERVIEW**

The Appellant held a personal pension plan with Pension Provider A. In October 2019 approval was sought from Revenue Jersey (RJ) for a drawdown from the pension plan in the gross sum of £73,420.00. Approval was granted by RJ and a sum was paid to the Appellant from which was deducted tax of £14,684.00.

The Appellant's liability to Jersey taxation was previously paid on a prior year basis i.e. the assessment for the year 2017 would be due for payment in 2018. Due to a change in the taxation legislation all taxpayers were moved onto a current year basis i.e. the assessment for 2020 is due for payment in 2020. Legislation was enacted to suspend payment for the year 2019 to avoid a taxpayer having to pay for two years in 2020.

The Appellant contends that the amount of tax deducted by Pension Provider A, and paid to RJ, should be applied against their 2020 liability to tax, as the totality of their liability to 2019 has been suspended.

RJ argue that the amount deducted by Pension Provider A should be applied against their 2019 liability.

**SUMMARY OF AGREED FACTS**

1. On the 10 October 2019 approval was sought by Pension Provider A from Revenue Jersey to enable the drawdown of the funds from a personal pension plan held by the Appellant.
2. Approval was granted by RJ for the drawdown.
3. The drawdown statement of 17 October 2019 submitted by Pension Provider A confirms:

Transfer from the Personal Pension Plan	£73,420.00
Less deductions for fees and charges	£1,502.00
Less Jersey income tax at the standard rate deducted by Pension Provider A	£14,684.00
Balance of funds paid to the Appellant	<b>£58,587.92</b>

4. The Appellant submitted their 2019 income tax return on the 15/05/2020
5. RJ raised and issued the 2019 notice of assessment on the 23/06/2020 detailing the gross drawdown pension income and the tax deducted at source.

6. The 2019 income tax liability of £3,254.00 was suspended in accordance with the approved legislation on the 30/11/2020 by RJ - Income Tax (Amendment No.46) (Jersey) Law 2021: deferral of 2019 liability (Schedule 5 paragraph 23).
7. The ITIS credits deducted from the 2020 remuneration which had been applied to the 2019 income tax ledger were moved to the 2020 ledger by RJ, in accordance with the Income Tax (Amendment No.46) (Jersey) Law 2021: transfer of payments from 2019 to 2020 (Schedule 5 paragraph 24).
8. The 2020 tax return was submitted by the Appellant on the 12/04/2021
9. The 2020 Notice of Assessment was issued by RJ on the 04/05/2021.
10. RJ sent an email to the Appellant on the 04/05/2021 enclosing the 2020 notice of assessment and advising of the credit available and requesting confirmation of how this was to be treated.
11. On 16/05/2021 the Appellant queried the amount of the credit stating "I interpret my 2019 liability – which is 'the amount of income tax assessed for the year beginning 1 January 2019' to be £17,938.00 and therefore is the amount of the 2019 suspended debt, which is the amount to be repaid to me. The fact that the 2019 liability included taxed at source does not detract from the fact that the income source forms part of the 2019 liability and is assessed to tax under Schedule D like other income sources."
12. RJ responded on the 19/05/2021 to advise "Regarding your claim that the taxed at source element of the 2019 assessment should also be repaid to you - please refer to the wording in Amendment 46: transfer of payments from 2019 to 2020 which allows for payments made to be transferred to the 2020 year of assessment.  
The debt arises at the pension fund and the payment is made and applied at the pension fund to their 2019 liability and is not part of the PYB to CYB transfer – so the physical payment is due at the pension fund – there is a credit allowed in your 2019 assessment for the tax that is due and payable by the pension fund in 2019. Therefore, there has not been any actual payment applied to your ledger to be carried forward in the PYB to CYB change in relation to your drawdown pension".
13. On 07/06/2021 the Appellant submitted an appeal against the decision of the Comptroller not to defer the whole amount of the 2019 liability. The email was acknowledged as received 09/06/2021.
14. On 13/07/2021 the case was reviewed by the Deputy Director – Tax Technical who upheld the view of RJ.

## CONCLUSIONS

Schedule 5 Article 23 states:

- (1) The 2019 liability for a person who is not a new taxpayer –
  - a) is not due and payable by the dates set out in Articles 39 and 41A; but
  - b) will become due and payable as specified in Regulations made under this paragraph.

(1A) This **paragraph does not apply to**

- a) a company; or
- b) a scheme manager of an approved
- c) A scheme manager of an approved Jersey scheme, an approved drawdown contract or an approved trust (as defined in Article 130) in respect of tax charged under Part 19.

(2) Article 41I does not apply in relation to the 2019 liability for a person who is not a new taxpayer.

Thus, a person's 2019 liability is effectively deferred in line with the regulations. However, 23(1A) (b) states that Article 23 (1) does not apply to a scheme manager .....

This paragraph (b) is difficult to understand as it appears to refer to the manager rather than the beneficiary. We read this as being that **a scheme manager** cannot defer a payment due to the Comptroller.

RJ argues that the Scheme Manager cannot defer their liability to pay their deductions to the Comptroller under schedule 19. We would agree with this argument, but this does not appear to be the issue as we are dealing with the taxpayer's position.

Schedule 5 Article 24 states:

- (1) This paragraph applies to a payment if –
  - (a) the payment was made before 1st January 2021;
  - (b) the payment was not **received as a payment by**
    - (i) a new taxpayer,
    - (ii) a company, or
    - (iii) **a scheme manager of an approved Jersey scheme, an approved drawdown contract or an approved trust (as defined in Article 130) for tax charged under Part 19; and**
  - (c) the payment was applied to the 2019 liability or to any penalties or surcharges in respect of the 2019 year of assessment.
- (2) The Comptroller must treat a payment to which this paragraph applies as a payment of income tax for the 2020 year of assessment.

Thus, payments made before the 1<sup>st</sup> January 2021 shall be transferred from 2019 to 2020 except if the payment was **received as a payment by a scheme manager**..... This could be read both ways, but taking it in the context of (b)(i) and (ii) we feel that the tax deducted was **received** by the Comptroller **as a payment by a scheme manager**..... By this analysis it is then clear that the payment made by the scheme manager in this case must be treated as a payment against the 2019 liability of the Appellant.

We are also of the opinion that the taxation deducted from the remittance to the Appellant must be regarded as a payment in this context.

Article 131M, dealing with pension payments states that any sum paid shall be treated as the earned income of the individual. Thus, the tax credit could be considered in a similar way to ITIS on emoluments. However, it is doubtful that a drawdown can be considered in the same way as the payment of a pension, indeed it is within the Comptroller's powers to order tax to be deducted on pension payments, but this should not be accounted for in the same way as a tax credit on a drawdown. We have also noted that on the Appellant's assessment the credit is given after the total liability to tax is calculated, whereas ITIS is shown as a payment on their "account" with RJ.

Whilst considering all of the arguments put forward by the Appellant, we are of the opinion that Schedule Article 24 is the overriding Article and thus the remaining arguments put forward by the Appellant fall away.

#### **DETERMINATION**

The Commissioners find in favour of the Respondent.