Appellant -V- Comptroller of Taxes
Retirement Annuity Trust & Tax Avoidance
December 2022

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

OVERVIEW

The Appellant, at age 60, opened a retirement annuity plan on 10 December 2020. He then made three contributions to it that totalled £50,000 between 15 and 17 December 2020. On 6 January 2021, he elected to withdraw the 30% tax free drawing permitted under Jersey legislation, namely the Income Tax (Jersey) Law 1961 ("the Law"). This reduced the investment to £35,000, the level at which the Law deems such investment to be "trivial" (Article 131CE(1) of the Law) and which can be drawn down by the beneficiary subject to a retention of tax payable at a reduced rate of 10% (Article 131L(5)).

The initial financial outcome was that (1) £50,000 was invested and subsequently withdrawn soon afterwards, attracting tax and Long-Term Care contribution exemptions totaling £12,615, (2) an actual tax payment of 10% (£3,500) was incurred on the rump element of £35,000 that was withdrawn using the "trivial" provisions plus (3) a pension management charge of circa £200. The net result was a saving (4), via tax exemption, of approximately £9,000. This had resulted from an investment into a pension plan which was unwound less than a month from inception.

This circumstance was reflected both in the Appellant's 2020 tax return and the related initial tax assessment. However, Revenue Jersey subsequently identified that the transactions involved appeared to solely represent a deliberate attempt to reduce the Appellant's income tax. A revised tax assessment was consequently issued, dated 14 February 2022, which reversed the tax relief previously allowed in respect of the pension plan. The Appellant subsequently appealed against such reversal.

The related chain of email dialogue and relevant reference material had been provided in advance to the sitting Commissioners for due consideration.

All parties recognise and accept that the transactions and initial outcome are prime facie not in breach of the immediately relevant aspects of the Law. However, it is the contention of Revenue Jersey that Article 134A enables it to challenge the applicability of a transaction, or set of transactions, to attract tax exemption if it/they appear to have been actioned mainly for the purpose of reducing income tax otherwise applicable. Article 134A, paragraph 3(a) establishes that, in such circumstances, it is for the taxpayer concerned to demonstrate that that was not the case.

The foregoing had been explained in writing by Revenue Jersey to the Appellant, who had been asked to provide reasons for unwinding his pension plan within a very short time of the initial investment. The Appellant had provided very little information in that respect, other than to refer to changed personal circumstances, which were not specified, and a wish to avoid the charges applied by the pension plan manager. His overriding stated view was that the provisions of Article 131 enabled the tax exemption

initially allowed and that the avoidance provisions provided for in Article 134A were in conflict with these and should not apply.

DETERMINATION

The Commissioners determined that the appeal should be refused.

STATEMENT OF FACTS

The Statement of Facts submitted to the Commissioners in advance of the hearing was agreed by both the Appellant and Revenue Jersey to be accurate. This is shown immediately below.

Timeline:

11 June 2020 – Appellant reaches 60 years of age.

10 December 2020 - Appellant establishes a Retirement Annuity Trust ("RAT") with Pension Provider further to Article 131CA of Income Tax (Jersey) Law 1961 ("the Law").

15-17 December 2020 – Appellant contributes £50,000 into the RAT in three tranches (due to daily transaction limits imposed by the Appellant's bank).

2 January 2021 – Appellant elects under Article 131CF (1) of the Law to withdraw £15,000 (30% of the fund value) from the RAT. Appellant receives £15,000 from the trustees.

6 January 2021 – Appellant elects to commute the remainder of the RAT fund under Article 131CE(1) of the Law as a "trivial commutation" lump sum receipt. Appellant receives £35,000 net of a 10% deduction at source made by the trustees of the RAT (as required by Article 131L of the Law) and trustee costs.

31 January 2021 - Appellant submits online his 2020 Jersey personal tax return, claiming a deduction for pension contributions of £50,000.

2 February 2021 – 2020 Notice of Assessment is issued, including a deduction for the £50,000 pension contribution. Income tax and long-term care contributions payable for the year is £6,713.19.

14 February 2022 – 2020 Amendment Notice of Assessment is issued, excluding a deduction for the £50,000 pension contribution further to Article 134A of the Law (Power of Comptroller to make assessment to prevent avoidance of income tax). Income tax and long-term contributions payable for the year is £19,346.34.

11 March 2022 – Appellant appeals against the Amended Notice of Assessment dated 14 February 2022 on the grounds the £50,000 pension contribution is tax deductible. Income tax and long-term contributions under appeal is £12,615.15.

MATTERS ADDRESSED AT THE HEARING

At the hearing, Revenue Jersey and the Appellant were given the opportunity to voice any specific aspects they wished to bring out, which resulted in a repetition of various of the matters reflected above.

Revenue Jersey, having first sought and received the Appellant's confirmation that the Statement of Facts adequately reflected the applicable circumstances, opined that the position centered around the key questions of whether the Law's anti-avoidance measures can apply in this case and, if they do, whether the position adopted by Revenue Jersey is reasonable.

They recognize that such measure should be used with great care, and it is therefore only rarely used. However, they felt that the processes in place provided adequate safeguards. They referred to the provisions of Article 134A as applying to "transactions", and that the circumstances concerned did indeed involve what can be viewed as "transactions".

They further stated that, in the absence of relevant Jersey case law or other relevant examples locally, reference had been made to a UK case in which tax avoidance had been defined. This was the case of Inland Revenue Commissioners v Willougby [1997], which established *that "… the hallmark of tax avoidance is that the taxpayer reduces his liability to tax without incurring the economic consequences that Parliament intended to be suffered by any taxpayer qualifying for such a reduction in his tax liability."* It is Revenue Jersey's contention that such terms are applicable in the case under consideration and therefore Article 134A is applicable.

Article 134A of the Law was commonly agreed to lie at the heart of this case. The relevant element states:

134A Power of Comptroller to make assessment to prevent avoidance of income tax[760]

(1) If the Comptroller is of the opinion that the main purpose, or one of the main purposes, of a transaction, or a combination or series of transactions, is the avoidance, or reduction, of the liability of any person to income tax, the Comptroller may, subject as hereinafter provided, make such assessment or additional assessment on that person as the Comptroller considers appropriate to counteract such avoidance or reduction of liability:

Provided that no assessment or additional assessment shall be made under this Article if the person shows to the satisfaction of the Comptroller either –

(a) that the purpose of avoiding or reducing liability to income tax was not the main purpose or one of the main purposes for which the transaction, or the combination or series of transactions was effected; or

(b) that the transaction was a bona fide commercial transaction, or that the combination or series of transactions was a bona fide combination or series of transactions and was not designed for the purpose of avoiding or reducing liability to income tax.[761]

The Appellant added to his previous written comments, first making reference to his having 35 years' experience in the finance industry. He had sought to fully understand the Law and considers the provisions of Article 134A to be subjective, discriminatory, lacking in transparency and having been inconsistently

applied. He stated that, in addressing the circumstance concerned, he had been driven by the specific terms of the Law alone.

Subsequently, one Commissioner asked what the pension manager's fees had been, which the Appellant described as being a not very large figure and estimated this to have been around £200.

A second Commissioner enquired as to the Appellant's intentions for the pension plan at the time of initial investment. The Appellant stated that this had been something of a last-minute decision, without any significant related future planning but he had been conscious that he had not made any pension provisions in the previous five years. Then asked what had changed so very soon afterwards, the Appellant commented that there had been personal circumstances that he did not wish to elaborate upon.

The third Commissioner then raised the fact that the Appellant was a financial adviser, who would be very familiar with the Law (which the Appellant confirmed) and wondered whether the transactions had been pursued as something of a test case, potentially for the purpose of advising clients going forward. The Appellant stated that he preferred not to comment on matters that extended beyond his own personal circumstance.

The requirement of Article 134A - for a person to demonstrate that the main purpose of a transaction, or transactions, was not to reduce liability to tax - was reiterated and the Appellant was asked whether, per such requirement, he wished to provide any further information in that respect. He confirmed that he had nothing further to add.

CONCLUSIONS

After due subsequent consideration, it was the unanimous view of the Commissioners that the Appellant has failed to provide sufficient information to resist the view of Revenue Jersey that the transactions were actioned mainly, or indeed completely, for the purpose of reducing the Appellant's liability to income tax.

Facts that were taken by the Commissioners to support that view were considered to be:

1. The very short time between establishment of the pension plan and it's winding up, having been less than one month.
2. The Appellant's assertion, both in prior written dialogue with Revenue Jersey and during the hearing, that the only purpose for making pension contributions, unless matched by an employer, was tax reduction. This was considered to be highly relevant to the applicability of Article 134A.
3. The amount of the investment, being a figure which would not provide a level of income sufficient to materially support the Appellant in later life, but which facilitated an immediate tax-free lump sum withdrawal of 30%, which in turn led to a resultant balance at exactly the maximum level deemed by Law to be "trivial", and which could therefore be drawn down whilst attracting a reduced associated tax liability at 10%.
4. Those transactions occurred in the year following the Appellant's 60th birthday, the earliest age at which commutation of a pension fund deemed to be "trivial" can take place at a preferential tax rate.

5. The Appellant’s knowledge of, and familiarity with, the Law and pension matters generally, which would have enabled him to identify the potential tax saving that he sought.

6. The Appellant’s failure to provide any significant level of information that met the requirement of Article 134A to demonstrate that the main purpose of the transactions was not to reduce his liability to tax. The Commissioners recognise that there may be personal circumstances of a sensitive nature which led to the actions taken but, given that the Appellant chose not to share any information in that respect, the panel felt that it had no choice but to disregard that aspect.

Further, the Commissioners shared the fundamental view that a tax saving should not be possible without the intended outcome or actions that a tax exemption is intended to support. This is in line with the definition of tax avoidance provided in the Willougby case and the approach established by the provisions of Article 134A of the Law.