

Article placed in Retirement Planner

Key points reminder

June 2010

The subject of Inheritance Tax and pensions generated headlines recently as a result of a tribunal ruling earlier this year. The judge at the tribunal found that an uncrystallised lump sum death benefit paid from a pension scheme should have been subject to Inheritance Tax. This was because the member had taken actions before her death that had the effect of reducing the value of her taxable estate.

The facts of the case were as follows:

- The member joined the scheme in 1995.
- In joining the scheme she created a discretionary trust to which all death benefits became payable under the policy.
- She was diagnosed with a terminal illness in April 2002.
- She reached her 60th birthday in September 2002, this being the Normal Retirement Date (NRD) under the pension policy.
- She was given the opportunity of receiving lump sum and pension benefits at this date but did not elect to take them.
- She died in July 2003.
- At the time of the member's death she had a surviving husband.
- The lump sum death benefits were paid to the deceased's non-dependant daughters, rather than her widower.

HMRC argued that, in not opting to take lump sum and pension benefits at the NRD, the member had failed to exercise her right. This failure reduced the value of her estate and increased the value of the benefit to the discretionary trust.

The counter argument was that the member had not consciously carried out an action or decided not to take the benefits. Her sound financial position resulted in little need to take up the option. This counter-argument was rejected by the judge. There has been a good deal of misunderstanding about the implications of this case, including some speculation that the ruling now puts all lump sum death benefits, including those paid from USP funds, at an increased risk of being subject to Inheritance Tax. Looking at the rules surrounding Inheritance Tax and the circumstances of this particular case suggests that it is a little too early to jump to such a conclusion. It does perhaps show that it is worthwhile looking at a quick refresher on the key issues to consider.

The rules HMRC has applied to this case have been around in one form or another since 1984, and have been in their present form since 1999. This is not something new and HMRC has confirmed in the press, and in discussions with A J Bell, that they are not applying the rules any differently from how they have previously.

If the lump sum death benefits are paid to the deceased's spouse or a dependant then Inheritance Tax should not be an issue because there is no reduction in the chargeable estate. It is only if lump sum death benefits are paid to a non-dependant that Inheritance Tax potentially becomes an issue. Often, any lump sum is paid to the widow(er), making this case irrelevant for the majority of clients.

The concern raised here only applies if the estate, plus the value of the lump sum, is valued above the Inheritance Tax threshold.

Both HMRC's guidance notes, and the Inheritance Tax form (IHT409) that must be completed after a member's death, include reference to the member surviving for two years after making changes to the benefits to which they were entitled. The HMRC guidance notes give the rule of thumb that if it was not known that the member was in ill-health when they decided whether to enter income withdrawal, and they survive for two years after that decision, and they made the decision to enter income withdrawal for retirement planning reasons, an Inheritance Tax claim would not arise.

The tribunal ruling did not make a direct link between the member's NRD and the possibility of a liability to Inheritance Tax i.e. the member could have gone into income withdrawal at any point up to the date of their death and so it would have been impossible for them to survive for two years after "making the decision" not to. However, there is no evidence suggesting that HMRC is looking at anything other than the chosen retirement date, where one exists, as the key date to

test whether someone makes a choice or not to enter income withdrawal.

It has been suggested that entering income withdrawal but not taking any income could be interpreted as the member reducing the value of the chargeable estate. The tribunal ruling leaves this possibility open but again there is no evidence that HMRC is applying this logic. It could be suggested that since its own forms do not ask for information about the level of pension being paid that it does not consider this as being a significant factor.

It must always be remembered though that this world of pensions is rarely simple. What this case does highlight is the need to review any discretionary nominations and the NRD on any plan to ensure that it is appropriate to the client's circumstances and the likely date upon which benefits could be required. This is particularly important where there is likely to be little need for benefits. HMRC always retain the right to challenge any case but any protection given is certainly better than none.

Billy Mackay
Marketing Director
A J Bell

END

Please note this document is intended for trade and national press individuals.

Notes for Editors

Pictures available by contacting kirsty.zollinger@ajbell.co.uk.

Billy Mackay
Marketing Director
07525 236 580

Andy Bell
Chief Executive
07973 137 272

Kirsty Zollinger
PR & Events Manager
0845 40 89 100

billy.mackay@ajbell.co.uk

andy.bell@ajbell.co.uk

kirsty.zollinger@ajbell.co.uk

A J Bell is continuing to grow rapidly in challenging capital markets. Invesco Perpetual and Midas Capital own 37% and 10% respectively of the share capital, the remainder being owned by Andy Bell and the management team.

Established in 1995, A J Bell specialises in providing administration, trustee and actuarial services for SIPP and SSAS.

A J Bell is now the largest privately owned provider of self administered pensions and stockbroking services in the UK, with in excess of 44,600 individual SIPPs and assets under administration exceeding £12.6bn. It also provides third party SIPP administration services for Barclays Stockbrokers, Halifax Share Dealing, Skandia and TD Waterhouse.

Our customer proposition - Market leading, low cost, transparent, service, value, choice, leading functionality, integrity, award winning.

Our business - Market leaders, growing, innovative, own intellectual property, profitable, stable, we don't provide advice or investment management.

Research by CoreData Research places Sippcentre alongside Standard Life as advisers' two most preferred SIPPs.



A J Bell includes A J Bell Holdings Limited and its wholly owned subsidiaries A J Bell Management Limited, A J Bell Limited and A J Bell Securities Limited.

A J Bell Management Limited is authorised and regulated by the Financial Services Authority. A J Bell Securities Limited is a member of the London Stock Exchange and is authorised and regulated by the Financial Services Authority.

Sippdeal, Sippdealxtra and Sippcentre are platforms provided by A J Bell Management Limited. A J Bell Platinum SIPP is provided by A J Bell Management Limited. A J Bell Platinum SSAS is provided by A J Bell Limited.

The companies listed in the adjacent table are all registered in England and Wales at Trafford House, Chester Road, Manchester M32 0RS.

Company	Company Number	VAT Number
A J Bell Holdings Limited	4503206	833 5478 13
A J Bell Management Limited	3948391	759 3531 03
A J Bell Limited	3091664	639 0316 44
A J Bell Securities Limited	2723420	918 4226 21