

complaint

Mr A complains that The Prudential Assurance Company Limited (hereafter “the business”) did not inform him of the potential tax liability he would incur upon the early encashment of his investment bonds. He states he would have delayed the early surrender of the bonds and sought advice if he had been provided with adequate information regarding his potential tax liability.

background

This complaint was initially assessed by one of our adjudicators, who was of the opinion that it should not be upheld. Briefly, she stated the business is not expected to provide tax advice to Mr A. She was also of the view that the £100 offered by the business seems fair and reasonable to reflect the distress and inconvenience caused to Mr A in respect of the business’ delay in sending him the chargeable event certificates. Mr A did not agree with our adjudicator’s findings.

A second adjudicator reviewed this case and reached a different conclusion. She believed the £100 offered seemed fair and reasonable in light of the poor customer service provided to Mr A. However, she also recommended that the business refund Mr A the £377.75 tax liability he incurred as a result of surrendering the plan early, together with interest. She considered that Mr A had enquired about his potential tax liability prior to surrendering his investments and chased this matter up, but the business provided him with this information after he had surrendered the plan.

The adjudicator agreed that the business was not in a position to provide tax-related advice to Mr A, but was of the opinion that it would not be unreasonable to have expected the business to warn Mr A of any potential income tax liability or loss of entitlement of age-related allowances. She noted it was likely Mr A would not have surrendered the plans and incurred the tax liability, given that Mr A attempted to reinstate the investments as soon as he received the statements indicating the tax liability.

The business did not agree with our adjudicator’s findings. It reiterated that it is unable to provide advice on any potential tax liability that may occur as a result of early encashment. It further stated that information sent to Mr A from the outset and over the years provided explanations about any potential tax liability that might arise if withdrawals are made from the bond. The business disagreed that it did not make Mr A aware that any chargeable gain may result in an income tax liability. It also stated it has not seen any evidence of the tax liability incurred by Mr A.

The adjudicator subsequently provided the business with a copy of Mr A’s HMRC and bank statements to show that he had incurred a tax liability of £377.75. Furthermore, she stated whilst Mr A might have been provided with information over time, he specifically enquired about the potential tax liability on this bond around October 2011. Additionally, the adjudicator noted the available evidence showed that Mr A had acted upon the business’ confirmation that no capital gains tax (CGT) would be applicable and surrendered his investments. She considered Mr A would have acted differently, rather than surrendering his investments, if he had been provided with adequate information.

As agreement has not been reached on this matter, it has been referred to me for review.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have reached similar conclusions to those of the second adjudicator and for essentially the same reasons.

Firstly, I appreciate that the business is not in a position to provide advice in relation to a consumer's tax circumstances. Hence, I am not saying it should have 'advised' Mr A. But I believe it should have warned him of the possibility that he would incur an income tax liability and possible reduction in his age-related tax allowance. In this instance, I have considered that this warning was indeed provided to Mr A, albeit after he surrendered the bonds, in the business' statement dated 17 November 2011.

I have considered that, on more than one occasion, Mr A attempted to establish the probability of him incurring a tax liability prior to surrendering his investments and that he eventually surrendered the plans upon the business' representative verbally confirming that no CGT would be applicable.

It seems there is no recording or transcript available of the relevant telephone conversation. However, there is a brief note that states unequivocally that the representative confirmed there was no CGT liability if Mr A were to surrender the bonds. It also does not appear the business disputes this statement was made.

However, whilst this may have been correct in so far as it went, I am not persuaded it gave Mr A the full picture. It seems Mr A was concerned, as a result of the good investment growth they had enjoyed, that the bonds may incur a liability for CGT. However, this indicates Mr A did not fully appreciate how investment bonds are taxed. They are not subject to CGT, but may be liable for income tax depending on the circumstances.

I consider this is something the representative would have known, but did not mention. I therefore think it is likely Mr A was left with the impression that he could surrender the bonds and not incur a tax liability.

Although information he had received from time to time, as well as that when he took out the bonds, may well have included details about taxation, I am not persuaded it is fair or reasonable in the circumstances of this case for the business to use this as justification for not providing Mr A with the information in response to his enquiry.

Given the nature of Mr A's question, it should have been reasonably apparent that he wished to establish the tax position in relation to the surrender of his bonds. It would have been relatively simple for the business' representative to give him brief details, possibly in general terms, of how the bonds could be liable for income tax. It would have then been for Mr A to decide how to proceed, and whether he needed advice or assistance from, say, a financial adviser or tax expert.

I am mindful that having given Mr A only partial information, the business then compounded the error by failing to put things in writing to Mr A as it had promised. It is not clear what information would have been provided, but if this clarified the position regarding income tax it would also have allowed Mr A opportunity of considering the matter further.

It does not seem Mr A was irrevocably committed to taking money from the bonds, and I understand he had alternative sources of capital he could have drawn upon. I am mindful

that when he did receive information that led him to understand the surrenders would incur tax, he tried to reinstate the bonds. However, this was not possible and he was left in the position of having to meet the tax charge.

I am therefore satisfied the fair and reasonable outcome in this case is for the business to reimburse Mr A with the tax payment he has made, which he has shown to be £377.75. The business should add simple interest to this sum at the rate of 8% a year from the date Mr A made the payment to HMRC to the date of settlement, in compensation for the loss of the use of this money.

I note that the business has already made a payment of £100 to Mr A in light of the customer service provided to him. Given the circumstances of this complaint, I believe this seems fair and reasonable to compensate Mr A for the distress and inconvenience caused to him. I therefore do not make any further award in respect of the distress and inconvenience caused to Mr A.

my final decision

For the reasons explained in my findings, it is my final decision that I uphold this complaint.

I require The Prudential Assurance Company Limited to compensate Mr A by refunding the tax liability incurred, plus 8% interest simple from the date of payment until the date of settlement.

If the business considers that it is legally obliged to deduct income tax from the interest, it must send a tax deduction certificate with the payment. Mr A can reclaim any tax overpaid from HMRC, depending on the circumstances.

Doug Mansell
Ombudsman