complaint

Mr D, as administrator of the estate of his late father, has brought this complaint. In summary, he says that on closure of his father's ISA account, Credit Suisse International has not paid the interest it should have paid and has deducted income tax which it should not have deducted. He is also unhappy with the service provided by the business during the closure of the account and later.

background

In 2011, Mr D's father invested in a Protected Capital Account plan with the business which was held within a cash ISA. The plan was for a fixed term of five years and its performance was linked to the FTSE 100 index.

Mr D's father passed away in September 2014. In the same month, Credit Suisse wrote to Mr D's father that following an investigation by the industry regulator, the Financial Conduct Authority (FCA), Credit Suisse was offering him the chance to cancel the investment early and receive compensation. The offer was to return his initial investment plus interest at a specified rate. Alternatively, he could keep the investment until the end date at which point he would get a minimum guaranteed return.

Mr D, as the administrator of the estate, opted to take the compensation payment.
The payment was made in January 2015 and following this Mr D raised his complaint with the bank. Not satisfied with its response, he brought his complaint to us.

Our adjudicator recommended that the complaint be upheld. In summary, he said that the interest paid should be apportioned to reflect the fact that the investment was held in an ISA wrapper until Mr D's father passed away, and interest accrued prior to the death should be paid gross. He also recommended that the business pay compensation £150 for the trouble and upset this matter has caused.

Credit Suisse did not agree. In summary it said:

- When Mr D's father passed away, the account lost the ISA status and the account was converted to a 'Direct Deposit' account in line with the HMRC's ISA guidance.
  The interest was paid after this conversion and the decision to deduct tax at the time is in line with the ISA guidance.

- The guidance states numerous times (e.g. 12.11, 12.7, 12.14) that ISA manager should deduct tax at the basic rate where the interest is paid after the death. Section 12.11 states that interest on cash deposits paid by the ISA Manager after the date of death is not exempt from tax. In this instance, no interest was ever earned whilst it was in the ISA wrapper and the interest was applied only subsequently when Mr D wanted to close the account. So the interest was subject to tax.

- The adjudicator referred to another financial business with which Mr D's father held a fixed deposit ISA account and had pointed out that it did not deduct any income tax for the period prior to death of Mr D's father. But it appears that the business was offering a much lower interest rate for a five year fixed deposit. So, even if it is assumed that the business would have paid interest without deducting tax, the estate would have received a lower amount than what it received from Credit Suisse. So it does not appear that the estate suffered any financial loss.

- It accepts that there were some avoidable delays. However, a payment of £100 would be appropriate by way of compensation in this regard.

Mr D said in summary:

- The point about the discrepancy in the amount of interest paid had not been considered by the adjudicator. Nevertheless it seems from the information provided by the adjudicator that interest was paid only until end of 2014. That is not acceptable especially as the payment was not made until late January 2015.
- The intention of the ISA guidance is that tax should not be deducted on the interest accrued to date of death. Where a death occurs, any accrued interest will always be paid after the date of death. So a strict interpretation of the rule would mean that tax would always have been payable on death. But that could not be the intention of the regulations. Presumably that is why the distinction between "in strictness" and "in practice" is made in the ISA guidance (as Regulations do not make it clear that the interest accrued up to the date of death should be paid gross). In his experience, the financial businesses invariably paid ISA interest gross without deduction of tax up to the date of death.
- Whilst the adjudicator has recommended compensation for the poor service, he ought to have made specific findings about the issues raised concerning it.

I issued a provisional decision upholding the complaint. I also set out how the compensation should be calculated. Both parties accepted my provisional decision. Mr D made some observations, in particular about the compensation award for the poor service.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to depart from the conclusions I reached in my provisional decision. I remain of the view that the settlement set out in my provisional decision represents a fair and reasonable outcome to this complaint.

Interest discrepancy

Mr D says that the gross interest should have been higher than what it was. It appears that the difference is mainly because Credit Suisse calculated interest up to 31 December 2014 whereas Mr D was expecting interest up to 16 January 2015.

It appears that the actual plan Mr D's father held was closed on 16 January 2015 when the units were sold. So, the interest by way of compensation should also be calculated up to the date of closure of the plan.

Tax deduction

Credit Suisse believes that the interest should be paid net of tax for the entire period and it has referred us to Chapter 12 of the ISA Guidance issued by the HMRC.

Paragraph 12.7 says: " *An ISA ceases on the death of the investor. Any interest, dividends or gains in respect of investments in his or her ISA that arise (which in general terms means 'paid') after the date of death to the date of closure are not exempt from tax*.."

Paragraph 12.11 says: " *In strictness (see paragraph 12.12), interest on cash on deposit (including uninvested cash in a stocks and shares ISA held after 1 July 2014) paid or credited by the ISA manager after the date of death is not exempt from income tax. ISA managers should deduct tax at the basic rate where appropriate and account for the tax due by deducting the tax from the next claim made*…"

Credit Suisse's argument seems to be that the entire interest was paid (or it arose or it was credited) *after* the date of death and so it should be paid net of tax.

However, 12.11 also signposts to paragraph 12.12 which says: "*In practice, however, ISA managers may apportion interest paid after the date of death into*

- *interest accrued up to and including the date of death, which can be treated as arising in the ISA (and therefore paid without deduction of tax), and*

- *interest accrued from the date of death, which is not exempt from income tax and where appropriate should be paid under deduction of tax at the basic rate*. "

This is then followed by an example. In that example, the interest on the ISA account was payable yearly and the consumer passed away after about 7 months from the start of the account. The example shows that the interest was apportioned before and after death and the former was paid without deduction of tax.

So as per the example in the guidance, even where the entire interest was *paid or credited* after the date of death, it would be acceptable for the ISA managers to apportion the interest before and after death and not deduct tax on the former.

Whilst Section 12.12 suggests that Credit Suisse was not obliged to do so, I consider it fair that it does. I agree with Mr D that if the rules were strictly applied, then invariably interest would always be payable net of tax in all situations where the consumer has died. This is because certain amount of interest would always have accrued up to the date of death and that would always be paid after death. I accept his argument that a distinction is made between 'in strictness' and 'in practice' to avoid this problem and as the regulations do not clearly specify that interest accrued up to the date of death should be paid gross.

The investment started in May 2011 and clearly the reason why Mr D's father invested within an ISA wrapper was to avail the tax benefits. And he had kept invested in it for nearly 3.5 years before he passed away. Had he survived he would have received interest gross of tax. So it does not seem fair to me to deduct tax on the interest he had earned for nearly 3.5 years just due to his unfortunate death.

Further, it is not possible to know precisely what Mr D's father would have done but for the business' failures. It is possible that he may have invested in such a way that this problem did not arise, for example by investing in a shorter term than agreeing to lock-in his money for 5 years with the business.

Credit Suisse has suggested that if the investment was for a shorter term then the interest received may not have been as high as that offered by Credit Suisse. I cannot be certain of that. Also, it is possible that Mr D's father may have invested for similar (5 year) term but with another ISA manager who may have apportioned the interest, in practice, as suggested in Section 12.12.

Taking all of the above into account I consider it fair and reasonable in all the circumstances of the complaint that Credit Suisse apportions the interest before and after death of Mr D's father and make a deduction for tax only on interest relating to the period after the death.

Credit Suisse has also referred us to paragraph 12.14 but it seems to me that does not apply in this case but to uninvested cash in stocks and shares ISA.

Poor service

This relates to what Mr D says is 'secondary complaint'. Mr D is unhappy with the level of service provided by the business during the closure of the account. In particular he is unhappy that it failed to respond to some of his letters and that there has been an administrative delay in making the compensation payment.

These are not in dispute. In my provisional decision I had proposed that the business pays £200 for its failures in this regard. It was my view that to the extent Mr D had to spend extra time than was necessary on this matter, it is possible that he could perhaps have spent that time otherwise for the estate. So I considered some compensation to the estate in recognition of this is appropriate.

Both parties have accepted the proposed award. Mr D has said that as personal representative of his father's estate, he stands in his father's shoes and so he is not a third party. In this instance Mr D has brought the complaint on behalf of his father who was the customer and the eligible complainant. Whilst I note Mr D's comment, for the reasons given I consider it appropriate that the compensation be paid to the estate.

my final decision

My decision is that the complaint should be upheld and Credit Suisse International should pay compensation to the estate as set out below:

1. Recalculate the total gross interest on the account up to 16 January 2015 instead of 31 December 2014.

2. Apportion the interest so arrived between two periods: (a) period up to the date of death of Mr D's father and (b) period thereafter

3. Calculate the total interest payable as if the tax was deducted only on the interest for period (b).

4. Work out the difference between the interest actually paid and interest payable as in (3) above. This represents the loss to the estate as at the date of closure of account. Credit Suisse should pay this amount to the estate.

   Credit Suisse should also pay interest on this loss from 16 January 2015 to the date of settlement. Interest should be at 8% simple per year. Income tax may be payable on this interest.

5. In addition, pay £200.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 25 February 2016.

Raj Varadarajan
ombudsman