

## **complaint**

Mr M complained that The Prudential Assurance Company Limited's actions caused him to exceed his personal allowance in the 2015/2016 tax year and he had to pay income tax as a result.

## **background**

Mr M transferred his pension away from the Prudential to another provider in October 2014. The transfer value was about £281,000. He was around 69 years old at the time.

In December 2015, the Prudential wrote to Mr M. It explained that it had made an error on his plan in relation to the way annual management charges had been applied. It said he was owed a further £2,829.63. It explained that 25% of this could be paid tax free and it had deducted £424.40 for income tax purposes from the remainder. This meant Mr M was sent a cheque for £2,405.23.

The Prudential explained that the tax it had deducted has been calculated in line with HMRC rules, but that it hadn't taken into account Mr M's actual income for the year. The Prudential recognised that there could be an overpayment, that Mr M could reclaim, or that he may have to pay more tax.

In September 2016 Mr M received his P800 from HMRC for the 2015/2016 tax year. It explained he was due a tax refund of £177 on the £424.40 that had been deducted from his payment from the Prudential. As a result he had in fact paid £247.40 of tax on the money the Prudential paid him in December 2015. The reason Mr M had partially exceeded his personal allowance and therefore qualified to pay some income tax was solely a result of the Prudential's payment to him. At that point he had structured his affairs so that he didn't exceed his nil rate personal allowance.

Mr M is unhappy with having to have paid this amount in tax. He complained to the Prudential in October 2016 that it hadn't considered a more tax efficient method of returning the money to him. He was also unhappy that if the error hadn't been made the money would have been transferred to the new provider in 2014 – so he wouldn't have incurred the tax charge in 2016.

The Prudential responded to Mr M, sending him a cheque for £50 to apologise for the distress and inconvenience it had caused. The Prudential did also offer to see if Mr M's new provider would accept the transfer of the monies paid in 2015 into his existing pension – which may allow Mr M to receive a refund of the tax he had paid. To do this, Mr M would need to return the money he had been paid to the Prudential.

Unhappy with the Prudential's response Mr M brought his complaint to this service. One of our investigators considered Mr M's complaint. He thought the Prudential had acted fairly in deducting income tax from the payment made and that it was more likely than not that Mr M would have paid tax on his pension at some point. He also thought the offer made by the Prudential was fair.

Mr M disagreed with this. He maintained it is an assumption that he would have paid tax on his pension and that he may in fact not live until he's 75 years old. He maintained that he had ordered his affairs in a way that he didn't need to pay income tax and it's only because of the Prudential's error that he has now paid it.

Because Mr M didn't agree with the investigator this matter has been passed to me for a decision.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As a matter of principle, I understand Mr M's frustrations. He has during his retirement sought to manage his affairs in a way which meant he didn't exceed his personal allowance and therefore wouldn't pay income tax on the income released from his pension. There's no doubt that the only reason he went above that allowance in the 2015/2016 tax year was because of the money paid to him by the Prudential.

It's also apparent that the reason the money was paid to him was due to mistakes the Prudential had made in the management of his original pension plan. Had that error not occurred the money would have been transferred to his new provider in October 2014; and, again, he wouldn't have paid income tax on the amount in the 2015/2016 tax year.

So, in short, I understand why Mr M has brought his complaint and why he feels like he does. But I don't agree that the Prudential have acted unfairly or unreasonably and I won't be asking them to do anything further.

Importantly, the Prudential has now offered to take back the funds from Mr M and transfer them to his new provider which may allow him to reclaim his tax. So, there is the opportunity for Mr M to unwind the tax bill if he chooses to do so.

But even if Mr M can't now return the money, I also agree with the investigator that, on the balance of probabilities, taking into account the size of Mr M's pension fund value – currently around £325,000 – and his age, he (or rather the pension) was more likely than not going to pay some tax on it in the future. And therefore the fact that he has paid some in advance has not caused him any real detriment. Mr M still had the benefit of those pension funds and the additional income in December 2015.

Mr M is nearly 73 years old. He has explained that he has deliberately not drawn down any significant sums from his pension as he wanted to leave it for his wife. He has also explained his health is poor. Once he reaches 75 his pension, on his death, will pass to his wife. But once he reaches 75 that sum will not pass tax free. In whatever form his wife accesses the pension she will be taxed at her marginal rate. Mr M has explained that his wife has a good pension of her own already.

I accept that Mr M hasn't reached 75 yet, and should he die before then his wife would receive the pension tax free. Mr M has said that the future is unknown and there is no certainty any tax would be paid on his pension. While I accept that's true, I conclude it still remains more likely that he will – and it at least remains equally uncertain that he wouldn't pay any tax at all. So I don't think the Prudential has acted unfairly by refusing to refund Mr M the £247.40 he has paid in tax on the pension monies he's now accessed.

**my final decision**

For the reasons given above, I don't uphold Mr M's complaint. If Mr M wishes to take the Prudential up on its offer to transfer the funds back to his new provider, then he should contact it directly regarding this.

Under the rules of our service, I'm required to ask Mr M to accept or reject my decision before 15 June 2017.

Benjamin Taylor  
**ombudsman**