

complaint

Mr B has complained about the potential tax treatment of his pension fund, which includes a significant amount paid to him by The Prudential Assurance Company Limited (Prudential) as compensation for a mis-sold personal pension.

background

In 1990, following advice, Mr B transferred out of his occupational pension scheme into a personal pension plan provided by Prudential. Prudential later added compensation to his plan as a result of the nationwide pension review project. Mr B complained in 2015 that Prudential hadn't adequately pursued the option of reinstating his benefits into his occupational scheme instead. He brought that complaint to this service in 2016.

Following our involvement, amended calculations were carried out and a compensation offer was accepted by Mr B in full and final settlement in February 2016. This compensation was not due to be paid until September 2016 around his 55th birthday to coincide with the earliest time he could choose to access his pension fund. It was paid directly into his pension fund, thereby enhancing it.

Early in 2017 Mr B raised further queries about his pension with Prudential, which were dealt with by Prudential as a new complaint and subsequently with this Service. His main issue was that he felt the initial compensation should have attracted tax relief. He also complained that having now moved his pension fund into a draw down plan, and having taken his tax free cash sum, the remainder in the plan which will be paid to him as income also should be paid to him tax free. He has said that he has researched this and found guidance on the HMRC website (and others) which confirm that compensation for pension mis-selling is tax exempt. Therefore, he feels that this should have been offered to him when he set up his draw down plan.

The complaint was investigated by one of our investigators who was of the view it couldn't be upheld. He was satisfied the compensation amount paid into Mr B's pension fund in 2016 was paid in gross and therefore no income tax relief was required. He also clarified that any monies Mr B takes from his draw down plan (after the tax free cash amount of 25%) would, and should, be taxed as income in accordance with Mr B's circumstances and tax position.

Mr B didn't agree with the assessment and remained of the view that Prudential should've applied for income tax relief on the compensation payment and that he shouldn't pay any tax on what he takes from the draw down plan.

The investigator reviewed Mr B's comments but felt unable to change his outcome. So because no agreement could be made the complaint has been passed to me to review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusion as the investigator.

Prudential has confirmed that the redress offered and made to Mr B in 2016 was paid into his pension plan gross. It was added to the fund as a contribution and as it was paid gross it didn't attract income tax relief. I'm aware that, where there is scope for a consumer to obtain tax relief – for instance if they have relevant earnings on which to base a pension contribution – businesses may be able to make a net contribution which is then 'grossed up'. But all this would entitle the business to do, is to reduce the amount it pays to ensure that the final gross figure increases the pension fund by the right amount. So if it had been possible to do that, Mr B wouldn't have seen any benefit from it.

The calculations that were carried out were in line with the pension review guidance at that point in time and were overseen by this Service as part of Mr B's previous complaint. This calculation found that in excess of £200,000 (gross) needed to be added to Mr B's fund to compensate for the mis-sale – and this is exactly what was paid into his pension plan. Therefore no tax relief is required to make that amount up. I know Mr B has queried whether this really is the case, but I have seen the calculations and can confirm the payment was made gross.

With regards to Mr B's pension now in the draw down plan, any monies taken from that after the tax free lump sum has been taken, will be subject to income tax in the normal way. This is the normal treatment of such plans and there are no concessions to this. It will also be the way the income from his former occupational scheme would've been taxed, after the tax-free cash sum he was entitled to take.

I appreciate Mr B has said he's found guidance to say the redress for mis-selling arising from the pensions review isn't subject to tax. This is correct and this is what has happened – Mr B hasn't received a one-off tax bill as a result of getting this payment from Prudential. This, however, only applies to the redress going into the pension. It doesn't apply to anything coming out of that pension. If Mr B were to not be taxed on what he takes from his draw down plan then he would be doubly compensated, as it were, which isn't correct. Again I know Mr B has said that the guidance available doesn't make that clear. I'm afraid I can't really comment on that - except that it has never to my knowledge been interpreted as meaning the pension fund produced by the compensation is subject to income tax in the usual way. All I can do is confirm he will be taxed on what he now takes from his draw down plan (other than any tax-free lump sum entitlement), and that this is correct.

Overall, while I can fully appreciate Mr B's concerns and that he wants to ensure that his money is being treated correctly I can confirm that the redress payment made to him for his mis-sold pension was made in full with no need for tax relief to be added. Also, given he now he wants to take his pension as regular income the normal tax rules do apply and this income will be taxed in the usual way and according to his normal tax position. I therefore can't see that Prudential has done anything wrong in its dealings with Mr B.

my final decision

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 December 2017.

Ayshea Khan
ombudsman