Ros Altmann: Burnt fingers on pension property may let down clients

Many people may have paid stamp duty unnecessarily — but the industry seems to have a legacy reluctance to touch this area

By **Ros Altmann** | 14th October 2022 8:00 am

Many financial advisers have advised clients to put business property into their personal pension funds — whether Sipps or Ssas.

The tax advantages of transferring or purchasing a property to be held in the pension wrapper — such as tax-free capital gains and rental income — can save clients significant sums.

Unfortunately, some years ago there was a huge problem for pension property purchases when advisers were led to believe, by many industry leaders, that property could be transferred ‘in specie’ without losing tax exemption.

> My efforts to alert the industry have been strongly resisted

They were relying on information from some HM Revenue & Customs (HMRC) officials who had previously suggested in-specie transfers were acceptable.

Rather than borrowing money within the pension fund for the purchase, which was of course possible, in-specie transfers saved transaction and borrowing costs, so clients were told the former was not necessary and they could just do the transfer in specie.

Subsequently, however, the Revenue changed its mind and some pension funds with transactions already completed lost their tax-exempt status.

HMRC claimed, despite its misleading guidance, that it had not agreed in-specie transfers were acceptable, and it pointed to the legislation that strictly required transactions with monetary consideration. This problem resulted in huge costs for some individuals or firms.

> Clients or customers who unnecessarily may have paid stamp duty should be contacted and given the chance to take advice on reclaiming overpayments

Pension industry leaders and organisations, recognising that HMRC guidance cannot be relied on, are fearful of any pension property tax issues.

However, if a specialist expert's legal interpretation of legislation is sought and followed, such issues should not arise.

I hope the industry and advisers will not shy away, but it seems there is a legacy reluctance to touch this area. That is what I found when I recently discovered a possible tax error relating to pension fund property transactions, but in this case the error is tax being overpaid, which clients may be able to reclaim if they are alerted to the situation.

> With only four years to make a claim, there's an urgency to alert potential beneficiaries

Unfortunately, my efforts to alert the industry have been strongly resisted. Perhaps the experience with in-specie transfers has coloured their thinking and deterred them from seizing the chance to potentially achieve thousands of pounds extra for client pension funds, from stamp duty that never should have been paid when the property transaction occurred.

Lack of familiarity

After asking a number of lawyers, I discovered most conveyancing solicitors did not know about this issue. Indeed, of the tens of stamp duty relief types, most solicitors were familiar with only a few; this had resulted in routine legal advice for pension savers to pay stamp duty on commercial properties transferred into their personal pensions.

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This potentially erroneous advice ignored the fact property transactions between multiple owners in Sipps or Ssas might have no stamp duty liability.

Most property or pension lawyers seem insufficiently familiar with stamp duty law intricacies applied to partnerships and related-party transactions. It is a complex area requiring specialist expertise.

When a leading firm of stamp duty specialists asked me to look into the matter, I was sceptical such an error could be so widespread. However, after comprehensively studying the legislation guiding stamp duty payments, anti-avoidance rules and partnership provisions, I believe many people may have paid stamp duty unnecessarily if connected parties and multiple owners are involved, as the correct calculation of stamp duty can be zero. With only four years to reclaim the money from HMRC, there seems an urgency to alert potential beneficiaries.

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Just as advisers would automatically suggest someone should claim higher-rate relief on their pension contributions to reclaim their overpaid tax, clients or customers who unnecessarily may have paid stamp duty should be contacted and given the chance to take advice on reclaiming overpayments.

This may not apply to every transaction, but there are many circumstances in which a stamp duty expert can identify warranted reclaims. But the reclaim application must be submitted within the four-year window.

Many clients have received stamp duty refunds. I hope more advisers, providers or trustees will give others the same chance for improved pensions.

Ros Altmann is a former pensions minister

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