



## Private Client Law Bulletin

**PENSION DEATH BENEFITS – A TAXING AREA**

Our Private Client Bulletin in December last year was titled "Enemy at the Gate" and described an apparent hardening of attitude by the Revenue in pursuing tax and questioning exemptions and reliefs.

In this context, the outcome in the recently decided Fryer Case should not have come as a surprise.

The case involved a 59 year woman, Patricia Arnold, who took out a pension transfer plan in November 1995 after having declared a Discretionary Trust of any such policy in favour of her children.

Under the terms of the plan:

- Mrs. Arnold was entitled to take her retirement benefits at any time between her 50<sup>th</sup> and 75<sup>th</sup> birthdays.
- If she died before taking her retirement benefits the value of the benefits passed to her legal representatives or the trustees of any trust of the benefits.
- The "normal retirement date" in the plan was 8<sup>th</sup> December 2002.

On and around 15<sup>th</sup> April 2002 Mrs. Arnold was diagnosed with advanced ovarian cancer. She died on 30<sup>th</sup> July 2003 without having taken the retirement benefits under the plan. The Revenue determined that Mrs. Arnold had made a transfer of value for inheritance tax purposes (under Section 3(3) of the IHTA 1984).

The Tribunal, agreed. It decided that:

1. Mrs. Arnold had made a transfer of value under Section 3(3) of the IHTA 1984 by omitting to take her retirement benefits under the plan.
2. Mrs. Arnold was to be treated as making the disposition immediately before she died (as she had the right to claim the benefit any time up until her death).
3. The exemption available under Section 10 of the IHTA (for dispositions between unconnected parties and conferring no gratuitous benefit) did not apply to her as she clearly intended to confer a benefit on her discretionary beneficiaries even if she may have had other motives too.

The Revenue's previously stated approach was that:

- The majority of pension arrangements would not be affected by Section 3(3) of the IHTA 1984.
- The Revenue would only consider raising a claim in cases where there was evidence of the policyholder's intention to increase someone else's estate and would look particularly at cases where the policyholder was suffering from a terminal illness and then deferred taking benefits.
- The Revenue would not normally pursue a claim even in these circumstances if the death benefit was paid to the policyholder's spouse or dependents or the policyholder survived more than 2 years after making arrangements.



Arguably, the Revenue's approach in this is consistent with its stated practice but the case has been seen by some (according to the Daily Telegraph article about the case) as overturning nearly 20 years of established practice and extending the "tentacles of Inheritance Tax".

The risk that family executors under-declare inheritance tax payable and face subsequent penalties in such circumstances is all too real.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Private Client issues, please contact: Duncan Bailey in Liverpool on 0151 600 3451, Richard Bate in Manchester on 0161 836 8840 or Stephen Marriott in Preston on 01772 229 816.

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