[2011] UKFTT 532 (TC)

TC01379

Appeal number TC 2010/8811

PENSIONS – LIFETIME ALLOWANCE – ***submission of a late application for protection of pension benefits – did the Appellant have a reasonable excuse for the late submission – No – Appeal dismissed***

FIRST-TIER TRIBUNAL

TAX

MR HUGH SCURFIELD **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: Michael Tildesley OBE (Tribunal Judge)
Harvey Adams FCA

Sitting in public at 45 Bedford Square, London WC1 on 20 June 2011

Joshua Munro, counsel, for the Appellant

Alan Bush, for HM Revenue and Customs

DECISION

The Appeal

1. The Appellant appealed against HMRC's decision dated 14 September 2010 and confirmed on review dated 26 October 2010 refusing his late application for lifetime allowance protection against a tax charge on pension benefits.

2. The issue in dispute was whether the Appellant had a reasonable excuse for the late application.

3. The background to this Appeal concerned the changes to the taxation regime of pension savings which were enacted on 6 April 2006. The changes introduced a threshold of a lifetime allowance for pension savings. If an individual's pension savings exceed the threshold, the tax payer would be liable to a lifetime allowance charge on the excess savings when the pension benefits are taken. The charge is fixed at 25 per cent if the excess savings are taken as pension, and 55 per cent if taken as a lump sum. The transitional provisions to the legislation give protection to individuals against the lifetime allowance charge provided they register a claim for protection with HMRC by 5 April 2009.

4. The Appellant retired in 1992 from full time employment as a Director with Norwich Union. On his retirement the Appellant took up his occupational pension. In 1994 the Appellant invested in a second pension with Standard Life, into which he paid premiums from 1994 to 2004. In 2010 the Appellant advised Standard Life that he wished to take his benefits under the policy, at which point he became aware of the lifetime allowance charge. The Appellant then immediately contacted HMRC, and submitted a claim for protection of existing pension rights on 10 September 2010, some 17 months after the cut off date of 5 April 2009.

5. The Appellant contended that he was not aware of the changes to the taxation of pension benefits until he contacted Standard Life. The Appellant was not in employment, and did not have the benefit of a financial adviser at the time the changes were made. Further he had no reasonable way of finding about the lifetime allowance charge. Given these circumstances the Appellant submitted that he had a reasonable excuse for not submitting on time his claim for protection of existing pension rights. HMRC argued that there was extensive publicity of the changes, and that the Appellant's failure to submit his claim on time was due to his ignorance of the law, which did not constitute a reasonable excuse.

The Law

6. Section 214 of the Finance Act 2004 introduced the lifetime allowance charge for pension benefits which provides as follows:

> "(1) A charge to income tax, to be known as the lifetime allowance charge, arises where—

(a) a benefit crystallisation event occurs in relation to an individual who is a member of one or more registered pension schemes, and

(b) either the first lifetime allowance charge condition or the second lifetime allowance charge condition is met.

(2)The first lifetime allowance charge condition is that—

(a) the whole or any part of the individual's lifetime allowance is available on the benefit crystallisation event, but

(b) the amount crystallised by the benefit crystallisation event exceeds the amount of the individual's lifetime allowance which is available on the benefit crystallisation event.

(3) The second lifetime allowance charge condition is that none of the individual's lifetime allowance is available on the benefit crystallisation event.

(4) *Not relevant*

(5) In sections 215 to 219—

(a) references to "the individual", in relation to the lifetime allowance charge, are to the individual in relation to whom the benefit crystallisation event giving rise to the charge occurs, and

(b)references to "the pension scheme", in relation to the lifetime allowance charge, are to the pension scheme to which the benefit crystallisation event giving rise to the charge, or the amount crystallised by it, relates.

(6) Schedule 36 contains (in Part 2) transitional provision about the lifetime allowance charge.

7. Paragraph 7 of schedule 36 to the Finance Act 2004 allows individuals whose pension had not yet matured and who had paid into their pension before the introduction of the life allowance charge to mitigate or avoid that charge if notice is given to HMRC in accordance with regulations.

8. Paragraph 7 offers primary protection or enhanced protection for aggregate pension rights in excess of the lifetime allowance as at 6 April 2006 and thereafter, whether or not these benefits are crystallised or uncrystallised. Under primary protection the value of the pension fund at 6 April 2006 is protected in line with increases in the lifetime allowance, provided the value of pension was already worth at least £1.5 million on 6 April 2006. Enhanced protection allows the value of any pension built up before 6 April 2006 to be shielded from tax, provided no further contributions are paid into the fund on or after 6 April 2006.

9. Paragraph 7 deals with primary protection and provides so far as is relevant to this Appeal as follows:

"7(1) This paragraph makes provision for the operation of a lifetime allowance enhancement factor in relation to all benefit crystallisation events occurring in relation to an individual where—

(a) the amount of the relevant pre-commencement pension rights of the individual exceeds £1,500,000 (the standard lifetime allowance for the tax year 2006-07), and

> (b) notice of intention to rely on this paragraph is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.
>
> (2) The lifetime allowance enhancement factor is the primary protection factor".

10. Paragraph 12 deals with enhanced protection, and provides so far as is relevant to this Appeal as follows:

> "1) This paragraph applies on and after 6th April 2006 in the case of an individual who has one or more relevant existing arrangements if notice of intention to rely on it is given to the Inland Revenue in accordance with regulations made by the Board of Inland Revenue.
>
> (2) But this paragraph ceases to apply if—
>
> (a) relevant benefit accrual occurs under the arrangement, or any of the arrangements (see paragraph 13),
>
> (b) a transfer of sums or assets held for the purposes of, or representing accrued rights under, the arrangement or any of the arrangements is made that is not a permitted transfer, or
>
> (c) an arrangement relating to the individual is made under a registered pension scheme otherwise than solely for the purposes of a permitted transfer.
>
> (3)Where this paragraph applies in the case of an individual there is no liability to the lifetime allowance charge in respect of the individual".

11. The Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 provides the mechanism by which individuals could rely on the protection given by schedule 36 of the 2004 Act. The regulations came into force on 6 April 2006 and specify a closing date of 5 April 2009 for making a claim for protection.

> "3.—(1) This regulation applies if the amount of the relevant pre-commencement pension rights of an individual (determined in accordance with paragraph 7(5) of Schedule 36) exceeds £1,500,000.
>
> (2) The individual may give notice of intention to rely on paragraph 7 of Schedule 36 ("paragraph 7").
>
> (3) If the individual intends to rely on paragraph 7, the individual must give a notification to the Revenue and Customs on or before the closing date.
>
> (4) For the purposes of this regulation the closing date is 5th April 2009.
>
> (5) Paragraph (6) applies if—
>
> (a) the individual gives the notification to the Revenue and Customs, and
>
> (b) the Revenue and Customs issue a certificate to the individual in response to the giving of the notification".

12. Regulation 12 provides the defence of reasonable excuse for late notification of claims and the right of Appeal to the Tribunal:

> "12.—(1) This regulation applies if an individual—
>
> (a) gives a notification to the Revenue and Customs after the closing date,
>
> (b) had a reasonable excuse for not giving the notification on or before the closing date, and
>
> (c) gives the notification without unreasonable delay after the reasonable excuse ceased.
>
> (2) If the Revenue and Customs are satisfied that paragraph (1) applies, they must consider the information provided in the notification.
>
> (3) If there is a dispute as to whether paragraph (1) applies, the individual may require the Revenue and Customs to give notice of their decision to refuse to consider the information provided in the notification.
>
> (4) If the Revenue and Customs gives notice of their decision to refuse to consider the information provided in the notification, the individual may appeal.
>
> (6) The notice of appeal must be given to the Revenue and Customs within 30 days after the day on which notice of their decision is given to the individual.
>
> (7) On an appeal that is notified to the tribunal, the tribunal shall determine whether the individual gave the notification to the Revenue and Customs in the circumstances specified in paragraph (1).
>
> (8) If the tribunal allows the appeal, the tribunal shall direct the Revenue and Customs to consider the information provided in the notification".

The Evidence

13. The Tribunal heard oral testimony from the Appellant, and admitted an agreed bundle of documents in evidence.

14. The Appellant's career was with Norwich Union from 1959 to retirement in July 1992. The Appellant was a director and the Actuary for Norwich Insurance and dealt with life insurance, fire and accident insurance and central services. The Appellant was President of the Institute of Actuaries from 1990 to 1992. During his career the Appellant was not involved with pensions work. On retirement from Norwich Union the Appellant took up his occupational pension which had grown to £113,743 per annum as at 2006.

15. Following his retirement the Appellant and his family moved their home to Shropshire with the Appellant devoting his energies to various charities, most of which were involved in the hospice movement. Since 1992 the Appellant's contact with his former employers and the finance and insurance industry has become remote.

16. In 1994 the Appellant took out a pension policy with Standard Life. The premiums paid were £22,500 (1994), £10,000 (1996), £12,000 (1997), and £18,300 (2004). The premiums for the policy came from the Appellant's part-time

employment earnings. Following the payment of the last premium in 2004, the Appellant on advice from Standard Life extended the age to his 75th birthday (9 December 2010) at which the pension crystallised.

17. The Appellant ceased taking regular financial advice from 2002 following the death of his independent financial adviser. The Appellant did take one-off advice in respect of inheritance tax from Standard Life in 2004 prior to the introduction of the Finance Act 2004. The Appellant did not receive any financial advice on the 2004 Act or at anytime subsequent to the Act because he had no intention of taking out any more investments.

18. Prior to and after 6 April 2006 HMRC put extensive advice in the public arena on the changes to the taxation of pension savings, which was accessible at different entry levels. Examples of the advice were included in the bundle:

(1) The Registered Pensions Manual which contained detailed advice on the action to protect pension rights.

(2) *"Pension Tax Simplification and You"* which was published on the HMRC website. The April 2008 extract stated that

> **So what are the tax limits?**
>
> "There is also a lifetime allowance (LTA) which is set at £1.65 million for the year 2008/09. When you take your benefits, if your total pension savings exceed this, you will be taxed on any amount over £1.65 million. This lifetime allowance is set at 25 per cent if your additional savings are taken as a pension, and 55 per if taken as a lump sum".
>
> **What do I need to do now?**
>
> "Only those few individuals with pension savings (or potential pension savings) of over the lifetime allowance or promises of a lump sum of greater than a quarter of this, will have to apply to HMRC to ensure they are exempt from the lifetime allowance charge…
>
> You are able to claim protection of pre-A-Day rights from the lifetime allowance charge by registering a claim with HMRC. … **Claims must be registered by 5 April 2009** on the *Protection of Existing Rights* form (APSS 200). If you think you may be affected by this, you should seek financial advice".
>
> **Where can I find out more?**
>
> "Visit our website at **www.hmrc.gov.uk/pensionschemes** to get the most up to date information on pension tax simplification including all the required forms and completion notes.
>
> Look for guidance specifically written for individuals, including explanations of the terms used in this handout. This can be found at **www.hmrc.gov.uk/manuals/rpsmanual/index.hm**
>
> Phone our Helpline on **0845 600 2622** (Monday to Friday 09.00 to 17.00).

(3) The new pension rules were also placed on the *Directgov* website. The website extract dated 11 September 2008 provided the following advice on the lifetime allowance:

> **"Lifetime allowance above which a tax charge will apply**
>
> - you will now have a 'lifetime allowance' against which the total value of the benefits built up in your pension fund/s by you and/or your employer (including investment growth) will be tested
> - the value of any pensions savings above the lifetime allowance will be subject to a 'lifetime allowance charge'; this will apply in addition to the usual Income Tax due on pension payments
> - the lifetime allowance for the tax year starting 6 April 2006 will be £1.5 million and will rise each year until it reaches £1.8 million in 2010; thereafter it will be reviewed every five years
> - if you take benefits above your lifetime allowance as a pension, the lifetime allowance charge on the excess amount will be 25 per cent
> - if you take benefits above your lifetime allowance as a lump sum, the lifetime allowance charge on the excess amount will be 55 per cent
> - the lifetime allowance 'test' will take place when you start drawing your benefits or when you reach age 75 (in this case tax would be payable as if you were drawing an income from the pension; you can't take a lump sum once you reach age 75)
>
> If your pension is close to, or above, the initial lifetime allowance figure it's important to seek specialist advice about how you might protect your pension from the lifetime allowance charge. Protection can be obtained up to 5 April 2009. You can also get general advice from The Pensions Advisory Service on 0845 601 2923 (open 9.00 am to 5.00 pm Monday to Friday), or you can speak to a pensions adviser".

19. The changes were also covered in the National newspapers, two examples of which were included in the bundle:

(1) FT Adviser (Financial Times): entitled, ***Deadline to claim lifetime allowance protection looms,*** published 16 February 2009:

> "HMRC has reminded individuals who want to make a claim for lifetime allowance protection for their pension savings to do so by 5 April, or potentially miss out.
>
> A person taking pension benefits valued at more than the lifetime allowance - currently £1.65 million – will be liable to a tax charge known as the lifetime allowance charge.
>
> Lifetime allowance protection means that part, or all, of an individual's benefits built up before 5 April 2006 and worth more than the lifetime allowance will be protected from that charge.

… HMRC spokesperson Ann Walker said: *If you miss the deadline, you won't have protection from the lifetime allowance charge: So if you want to apply for lifetime allowance protection, download the form and return it to us by 5 April"*.

To make a claim, download the form APSS 200 from HMRC website at **www.hmrc.gov.uk/pensionschemes/protection.htm.**

(2) Mail on Sunday 22 March 2009 and Mail Online last updated 21 March 2009: entitled ***Top earners must act now to avoid 58 per cent pension tax***:

"Top earners have just a fortnight to try to avoid a punishing pensions tax.

Up to 100,000 managers and senior executives in the public and the private sectors could be facing tax bills of up to 58.75% on pensions that exceed the Government's lifetime allowance.

Many of these may still be able to escape the tax by registering their fund before the end of this tax year. But they must act quickly.

John Lawson, head of pensions policy at insurer Standard Life, says: 'There will be a fair collection of people who end up kicking themselves in a few years because they have missed a trick in not protecting their pension.'

The lifetime allowance was introduced in April 2006 as part of a shake-up named 'A-Day'. It capped the maximum value of tax advantaged pension that individuals can build up. The allowance was set at £1.5m, rising in steps to £1.75m from April 6 this year and to £1.8m next April.

Crucially, any pension above the lifetime limit when you retire is hit by a penalty tax charge of 55%. For some this will rise to 58.75% from April 2011 when a new 45% tax rate kicks in for those with incomes of more than £150,000.

A-Day also allowed a three-year window for those who had already built up money in their funds to 'protect' their pension against the tax charge. It is this window that closes on April 5.

While the lifetime allowance was aimed at City traders and executives of the biggest companies, the pension tax could catch doctors and hospital consultants, senior civil servants, the top ranks of the police and military, council executives and even some of the most senior head-teachers.

This is because their generous final-salary pensions could be valued above the lifetime allowance, particularly for those who started work before 1989, when a pension cap was introduced…

Under the rules, a final-salary pension is converted to a fund value at the rate of £20 of fund per £1 of income. So someone entitled to a pension of £50,000 a year is deemed to have a fund worth £1m. The calculations require all private pensions to be added together.

There are two ways to protect your pension. Enhanced protection is the most generous for savers. It allows the full value of any pension built

> up before A-Day to be shielded from the tax. But it applies only to those who stopped paying into their fund or contributing towards an employer's pension before April 6 2006. If even a penny has been paid in after that date, then enhanced protection is not an option.
>
> Which leaves primary protection. Here the value of the fund at A-Day is protected in line with increases in the lifetime allowance (see box). But this is only an option for those whose pension was already worth at least £1.5m on A-Day".

20. The Appellant accepted that he skimmed the finance pages of national newspapers and was aware of the pension deadline in 2009 but he had no idea that the changes would impact upon him.

21. On 10 September 2010 the Appellant submitted a claim for protection against the lifetime allowance charge. HMRC rejected his claim as it was some 17 months late. On the 1 November 2010 the pension benefits under the Standard Life scheme matured with a value of £118,090.05, which he took out as a lump sum resulting in a lifetime allowance charge of £64,949.53 (55 per cent) and a balance of £53,140.53. If the Appellant had secured protection the tax charge on his pension benefits would have been £35,427 which meant that without protection he paid an additional £29,523 under the lifetime allowance charge.

Reasons

22. The Appellant accepted that without the protection he was liable to the lifetime allowance charge on the entirety of the benefits under the Standard Life pension. The lifetime value of his benefits under the Norwich Union occupational pension as at 6 April 2006 amounted to around £2.5 million which together with the value of the benefits under the Standard Life pension crystallising after 6 April 2006 took the Appellant significantly above the operative threshold of £1.8 million in 2010/11 for the imposition of the tax charge.

23. The dispute concerned whether the Appellant had a reasonable excuse for not giving the notification of protection by the closing date of the 5 April 2009.

24. The Appellant argued that he was unaware of the existence of the lifetime allowance and charge, and that his ignorance of the legal provisions dealing with protection against the charge constituted a reasonable excuse. The Appellant acknowledged that ignorance of the law was generally no excuse for actions taken by individuals. The Appellant, however, considered that his circumstances were somewhat different from the usual assertions of ignorance, and that a distinction should be drawn between ignorance of basic law, and of the application of complex technical rules. In this respect the Appellant relied on the decision in *Neal v Customs & Excise Commissioners* [1988] STC 131 which was concerned with an Appeal against the imposition of a penalty for late VAT registration, where the Appellant relied on the defence of reasonable excuse founded on ignorance of the law relating to VAT.

25. Simon Brown J in *Neal* at 134 referred to the Tribunal decision of Mr D C Potter, QC in *Geary v Customs and Excise Comrs* (unreported, 13 March 1987) who dealt with the question of ignorance of the law in this context as follows:

> “I now turn to the question of penalty. The onus lies on each appellant to establish to my satisfaction that "there is a reasonable excuse for his conduct" namely for his failure to notify to the commissioners his liability for registration. In this respect ... Mr McLaughlin on behalf of the commissioners [submits] that ignorance of the law is generally no defence to a criminal charge, in that a criminal intent does not necessarily require knowledge on the part of an accused that his acts or omissions were contrary to law and constituted a crime; the same holds good as respects civil penalties. However, I am not for my part prepared to accept that general proposition in the context of s 15. I have to ask myself what Parliament intended by its language ("reasonable excuse for his conduct") in the context of s 15. The section is draconian, in that it imposes a penalty of 30% (without power for any authority to mitigate) without reference to the amount of tax lost to the State, and indeed, without reference to the justice of the matter. Nobody has a discretion as to the imposition or the amount of the penalty, save where the taxpayer satisfies the commissioners or the tribunal that there is a "reasonable excuse for his conduct". The penalty being draconian, it is in my view reasonable to assume that the phrase "reasonable excuse" enables, indeed obliges, the tribunal to take into account all the facts of the case, including ignorance of the law.

26. Simon Brown J building upon the Tribunal decision in *Geary* said:

> “It seems to me essential to recognise a distinction between on the one hand basic ignorance of the primary law governing value added tax including the liability to register and on the other hand ignorance of aspects of law which less directly impinge upon such liability. I believe that this distinction was recognised by Mr Potter and is to be found reflected in the passage I have cited from his decision in *Geary*. …
>
> In the result, whilst not accepting the wider submissions of either party, I have decided that the tribunal was right to conclude that they were bound to reject the taxpayer's argument that she could invoke her ignorance of basic value added tax law as reasonably excusing her default. That, it is plain from the context, is all that the tribunal meant when they said that, 'ignorance of the law cannot be an excuse'. This case was simply not concerned with the taxpayer's ignorance other than of basic value added tax law let alone ignorance of mixed law and fact. Had it been, then in my judgment the tribunal ought certainly to take such matter into account as part of the overall facts of the case….
>
> In this case, however, there could be no doubt. The default was entirely the product of basic ignorance of value added tax law. That cannot be construed as a reasonable excuse” (*Neal v Customs & Excise Commissioners* [1988] STC 131 at 136).

27. The Appellant contended that in his particular circumstances ignorance of the law constituted a reasonable excuse. The basis for his proposition was two-fold. First the

Appellant did not have the services of a financial adviser when the 2004 Act and the relevant Regulations dealing with pension protection came into force. Second, the Appellant without advice had no reasonable way of finding out about the lifetime allowance charge. Underpinning his two-fold proposition, the Appellant asserted that the provisions dealing with lifetime allowance were complex and involved the introduction of new concepts and terminology. Further the tax charge on pension benefits above the lifetime allowance was draconian.

28. The Tribunal accepts the Appellant's opening premise that his defence of ignorance should not be summarily dismissed as contended by HMRC but that it may be a factor in considering whether or not a reasonable excuse exists. It is, therefore, necessary to consider the Appellant's plea of ignorance in the context of the circumstances of this Appeal.

29. The Tribunal starting point is to consider the nature of the taxation law engaged in this Appeal, which was described by the Appellant as complex and draconian. The 2004 Act implemented the changes brought about by the pension tax simplification scheme which were intended to introduce new simpler rules about the amounts that could be saved in pension schemes and the tax relief on pension contributions. The changes were summed up by the advice on the *DirectGov* website:

> "You can now save as much you want into any pension scheme. The rules for claiming tax relief on your pension contributions are also more flexible, though tax charges will apply if you go above certain new allowances".

30. The main change to the taxation of pension benefits was the introduction of two overall limits for tax relief, a maximum lifetime allowance for total pension savings, and a maximum annual allowance for total contributions. The principle of having limits for tax relief was not, in the Tribunal's opinion, a complex concept which was incapable of being understood by an individual with a basic grasp of the impact of taxation upon pension savings and income. The public information on the changes to the pension rules published on HMRC and *DirectGov* websites highlighted the new tax limits in straightforward language and signposted individuals to sources of more detailed information on the changes, including the services of a financial adviser in the case of the lifetime allowance.

31. The effect of the introduction of a lifetime allowance was to limit the scope of the tax relief, not the creation of a new penalty. The consequence of this change was tempered by the three year period after its implementation in which an individual could secure protection against the change. Given these circumstances the Tribunal does not consider the lifetime allowance to be a draconian measure.

32. The Appellant argued that it was reasonable for him not to have the services of a financial adviser at the time of the changes to tax relief on pension benefits. He had long retired from his employment with Norwich Union, and had spent the majority of his retirement doing charitable works and rural pursuits. The Appellant no longer had a need to engage a financial adviser following the death of his adviser in 2002, particularly as the Appellant had no plans for further investments. The Tribunal

questions the relevance of this line of argument. The Tribunal accepts that at the time of the changes to pension benefits the Appellant did not have the services of a financial adviser. Given that fact, the next question posed by the Appellant was whether he without a financial adviser could reasonably have been expected to discover the need to apply for protection of his pension benefits by 5 April 2009.

33. The Tribunal makes the following findings of fact:

(1) The changes to pension benefits including the lifetime allowance charge had been in the public domain since 2004 when the Finance Act was passed, and for a period of five years before the deadline date for submitting claims for protection against the lifetime allowance charge.

(2) The introduction of a maximum lifetime allowance for tax relief on total pension savings was a key part of the changes and featured prominently in the public information on the pension changes published on the HMRC and *Directgov* websites.

(3) The information on the HMRC and *Directgov* websites included details of the financial limits for the lifetime allowance and of the possibility of making claims for protecting pension benefits from the lifetime allowance charge. The websites signposted individuals who may be affected by the lifetime allowance to the services of a financial adviser and sources of more detailed information. The fact that this information gave no explanation of the method for calculating the lifetime allowance did not undermine its value for highlighting the changes to those individuals that may be affected. The Tribunal formed the view that individuals with high value pensions or potential pensions would be put on notice to make further enquiries by the information.

.

(4) The existence and the consequences of the lifetime allowance were covered in the financial pages of the national press. The extract from the *Mail on Sunday* supplied details of how the lifetime allowance was calculated. The Appellant pointed out that HMRC had only produced two examples of press coverage which suggested to him that there had been very little publicity in the press about the lifetime allowance. The Tribunal notes the Appellant's observation but is satisfied that the entirety of HMRC's evidence including the HMRC and *Directgov* websites demonstrated that information on the effect of the lifetime allowance was widely available in the public domain.

(5) The changes to pension benefits were of direct relevance to the Appellant's situation. He was in receipt of a sizeable pension from his former employers and held another pension which had not matured. The Tribunal does not accept the Appellant's suggestion that having left his employment he was somehow detached from developments in the taxation of pension benefits. His pensions constituted his principal sources of income in his retirement.

(6) Although the Appellant denied that he was aware of the specific public information on lifetime allowance relied upon by HMRC, he accepted that he skimmed the financial pages of the newspapers, and knew of the deadline date of

5 April 2009. The Tribunal concludes from the Appellant's admission that he was aware of the changes to pension benefits but for some inexplicable reason did not perceive the relevance of those changes to his personal situation.

(7) The Appellant was in a better position than most individuals of identifying the relevance of the introduction of lifetime allowance to his situation. He was a distinguished Actuary and fully conversant with financial matters.

34. The Tribunal concludes from the above findings of fact that the Appellant without financial advice could reasonably have been expected to discover the need to apply for protection of his pension benefits by 5 April 2009.

Decision

35. The Tribunal decides that

(1) The introduction of a lifetime allowance for pension benefits involved a relatively straightforward principle of taxation law of setting a maximum ceiling for tax relief. An individual with a basic grasp of the impact of taxation upon pension savings and income would have recognised the relevance of the change, and of the need to seek further advice about whether the change applied to his specific circumstances.

(2) The information on the pension changes which featured prominently the introduction of a lifetime allowance and the option of applying protection was in the public domain for at least five years prior to the deadline date of 5 April 2009 for submitting claims for protection.

(3) The public information on lifetime allowance and protection was in an accessible form. The HMRC and *Directgov* websites headlined the principal changes and signposted individuals to sources of further information and financial advisers. The public information was supplemented by articles in the financial pages of National newspapers.

(4) The lifetime allowance was relevant to the Appellant's personal circumstances. He was in receipt of a sizeable pension with a second pension about to mature.

(5) The Appellant was aware of the new provisions in relation to pension benefits from his reading of the financial pages of the National newspapers. The Appellant's professional background was such that he should have recognised the relevance of the new provisions to his situation but for some inexplicable reason failed to make the connection with his personal circumstances.

36. The Tribunal holds that the Appellant's ignorance of the legal provisions dealing with protection of pension benefits had no rational basis, and did not constitute a reasonable excuse. The Tribunal, therefore, dismisses the Appeal.

37. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later

than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

TRIBUNAL JUDGE
RELEASE DATE: 5/8/2011