

Mr & Mrs Mehta  
Kearsley Airways Limited  
8 Temple Gardens  
London  
NW11 0LL

13 December 2016

Dear Mrs Mehta,

**Mr and Mrs M Mehta Pension Scheme**

Many thanks for your time last week and for your hospitality.

You have requested me to address a number of issues raised by Talbot & Muir and I would like to reassure you on the governance of the pension scheme whilst under my stewardship and over-sight. In this letter, I have sought to back this up through supporting paperwork and links to the relevant tax practice on which this advice has been given.

I attach a confirmation from HMRC that the pension scheme continues to be registered with them and that as a result the scheme enjoys the following exemptions:

- tax relief on member contributions up to certain limits,
- relief on employer contributions -,
- a contribution paid by an employer in respect of their employee scheme is not taxable as earnings for the employee concerned,
- certain lump sums paid to the member (such as the pension commencement lump sum) or following the member's death will not be liable to income tax as long as they are within the member's lifetime allowance.
- most investment income is exempt from income tax, and
- gains from the disposal of scheme investment are exempt from capital gains tax.

This is supported from the following HMRC tax guide link:

<https://www.gov.uk/guidance/pension-administrators-register-a-scheme#benefits-of-registering-a-pension-scheme>

## **Pensions Regulator Returns**

In addition to the pension scheme being registered with HMRC, it is also registered with the Pensions Regulator who deals with all non-tax related matters. A copy of that latest return is enclosed and you will note that it is correctly registered with their Office.

I therefore warrant that the pension scheme is correctly registered, with all returns up to date. I further warrant that the information and advice given over the years is correct and consistent with HMRC and Pensions Regulator rules at that time.

Turning to the questions raised by Talbot & Muir, I confirm the following:

## **Pensions in payment**

The pension benefits were determined as long ago as 2007. The pension funds at that time were both registered for protection against the lifetime allowance charge.

The application for Mr Mehta stated that his share of fund amounted to £4,721,877 and his lump sum at that time was £763,620 which I registered for protection. By registering his lump sum for protection we were able to pay a higher lump sum than would otherwise be the case. The lump sum protected was 17% of Madhoo's fund and a certificate of protection was issued by HMRC. This percentage was later applied to his share of fund when he reached his 75th birthday.

Meenal's pension fund, but not the lump sum was protected. The reason for this is that it was to Meenal's advantage for the lump sum to be equal to 25% of the protected lifetime allowance, being £412,500 and this was paid shortly before age 75.

This was calculated in accordance with HMRC rules and reported to HMRC at that time in accordance with their reporting requirements.

## **Pension income**

Talbot & Muir state that they were unable to clearly identify the pension position and in particular raised the matter of the pension reviews.

When you both took your pension lump sums, you were required to draw pension income. In the 2011/12 tax year, changes in pension legislation were such that it was in your interests to take pensions in the form of a "scheme pension".

The effect of this was that we could also cease the pension payments to you both. The trustees adopted scheme pensions as per my advice and this allowed the income and gains to remain within the pension scheme. I have reproduced the relevant tax rules here: <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm062340#IDAXFLRG>.

You will note that the rules clearly state: In specific circumstances, the annual rate of a scheme pension payable to a member may be reduced or stopped, without prejudicing that pension's

classification as a scheme pension. The specific circumstances are those where viz a viz the reduction in the rate of scheme pension payable is being applied to all scheme pensions being paid under the scheme to or in respect of its members".

The scheme pensions were stopped and P45s were issued to you both; a copy of those P45s are enclosed. Talbot & Muir cannot claim that no pensions have been reviewed as scheme pension ceased for tax reasons.

### **The position of being a Pensioner Trustee**

My advice to the family is to avoid the trap of having a third party as a trustee of the pension scheme. Independent Trustees, or Pensioner Trustees were a legal requirement for pension schemes up to 2006. Since that date, there was no longer a legal requirement and I cannot think why it would be in your interests to have a trustee company which you have no prior relationship with, who would also be a co-owner of the assets of the pension scheme.

In my mind, it would be best that Meera is an additional trustee as she is best placed to ensure that the pension fund becomes a legacy for the children and grandchildren. To this end, I have prepared a deed of appointment of trustee. This appoints Meera as a trustee of the pension scheme. This will need to be signed by everyone, the original kept on your files with one copy returned to me.

### **Romeera Aero-Spares Limited.**

The Company whilst dormant does need to be removed from the pension scheme and all its powers transferred to Meera, who will also become the Registered Administrator for the pension scheme. Meera, will then delegate those functions, as in the past to us to act as the Practitioner and deal with all matters with HMRC. I will need to prepare a separate body of documents to facilitate this which will need to be charged for time spent. Romeera Aero-Spares can then be wound up.

### **Cash on Deposit**

I appreciate at this time there is a lot of cash on deposit, I do think that consideration needs to be given to long term investment of this money. Whilst I am not a personal financial advisor, I am happy to give strategic guidance on options available. Do let me know if you wish me to make some enquiries on your behalf.

### **Loans and Investments into India**

It is perfectly permitted for investment to be made into India. It is wrong for there to be any suggestion that the investments made by Madhoo, who discussed these with me were somehow unauthorised.

To back this up, I have reproduced an extract of the rules of this pension scheme which states

that: *The Trustees have full powers of investment and application including all such powers which they could exercise if they were absolutely and beneficially entitled to the Fund; subject to clause 5.6.*

*In particular and without prejudice to the generality of the foregoing the Trustees may invest or apply all or any part of the Fund in any part of the world: in any interest in land or property (including commercial property); lend monies to, and borrow or raise monies from, any person for such purposes and upon such security and subject to such terms as they consider fit provided that those terms are consistent with the requirements of the Act.*

I trust that you will be satisfied that the investments made in India were in accordance with rules of the scheme.

I trust that this covers everything, if there is any else I have missed at this time do please let me know.

Yours sincerely

*G.A. McCloskey*

Gavin McCloskey  
**For Pension Practitioner .Com**