

Private and Confidential

Trustees of the Robinson Family SSAS
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Email Only

Dear Sirs,

Robinson Family SSAS

This firm undertakes pension administration and provides guidance on HMRC practice to over 450 small firms and their accountants. We are in a unusual position in that we have specific experience in dealing with HMRC where the issue of tax deduction arises on pension contributions.

You have requested through your conversations with Dave Nicklin for this firm to provide specific guidance in respect of a scheme contribution of £500,000 and whether that contribution would qualify for corporation tax relief.

Background

The scheme operated is an employer's occupational pension scheme, adopting small self administered scheme rules. It operates as money purchase, meaning that the benefits paid are determined by the available money held in the scheme for each member.

As an occupational pension scheme, membership is open to employees and serving directors of the Company.

The rules of the pension scheme have created two types of pension accounts, namely a general fund and an individual fund. The scheme has been tax registered on this basis with HMRC.

Much of the areas I will cover are quite technical, this is not to confuse you but is intended to give assurance and support needed in respect of the funding of this pension scheme.

Allocating contributions

Any contribution may be allocated to one or more new or existing individual funds in respect of such one or more members as the Company may direct at or before the time when it is paid. In the absence of any such direction, to the General Fund.

Under rule 26 of the Scheme rules, the Trustees may at any time apply all or any part of the General Fund to create or augment any individual fund or otherwise provide new or increased benefits, either immediate or prospective, for any person or in any other way which in the opinion of the Trustees is consistent with the status of the Scheme as a registered pension scheme.

It is important to consider prospective as contributions paid to a general fund and not allocated, would be considered a prospective benefit.

Wholly and Exclusively for the purpose of Trade

In respect of the controlling directors and connected persons, this is broadly covered by S34 Income Tax (Trading and Other Income) Act 2005, S54 Corporation Tax Act 2009.

A pension contribution by an employer to a registered pension scheme in respect of any director or employee will generally be an allowable expense unless there is a non-trade purpose for the payment. Where there is a non-trade purpose for the payment, then the payment is disallowable. The overall theme being is the payment must be to the advantage of the Company and cannot be solely to the advantage of the members of the pension scheme.

In cases where the contribution is part of a remuneration package and paid wholly and exclusively for the purposes of the trade, then the contribution is an allowable expense, unless it is excessive i.e. whether the pension contribution being part of remuneration is excessive.

The Company established a pension scheme for its directors and key persons and has introduced a discretionary funding of that pension scheme for those persons. The pension contributions made into the individual funds for the members being:

Julia £20,000

Jose £10,000

Colin £10,000

Neil £5,000

Craig £5,000

Having regard to the ages and the earnings of those members, I would not consider that those contributions could be considered as excessive, and would not qualify for tax relief. I would recommend that the Company, if it has not done so already ensures that the employee and director contracts provide for a pension scheme.

Annual Allowance

Each member of a registered pension scheme has an annual allowance, subject also to carry forward provisions that I will not go into here.

I do consider that in the event of Julia's parents being in capped drawdown that a contribution of £40,000 for the current tax year and £130,000 of unused relief to be excessive given their services to the business.

The annual allowance is currently £40,000 and where any persons has earnings above £150,000, the annual allowance reduces on a tapered basis (a 'reduced annual allowance'). From the salary and income data provided, there appears to be no-one who will be affected by the reduced annual allowance rules.

Spreading of Tax Relief

Any relief in respect of contributions made in a previous chargeable period that has been spread into the current chargeable period does not count as a contribution paid in the current chargeable period as the contribution was actually paid in a previous chargeable period.

Certain contributions do not need to be spread. These are contributions to pay for:

- cost of living increases to pensions in payment to pensioner members, and
- benefits for future service for members joining the scheme in the current chargeable period.

These contributions can be excluded when working out how much has been paid in the current chargeable period for spreading purposes. As the funds held in the general account are in respect of benefits for future service, and the contribution paid does not exceed £500,000, I do not consider that Section 197(3)(a) Finance Act 2004 applies for spreading purposes.

General Fund

HMRC has tax registered this pension scheme for tax relief recognising that a general fund/account exists as per the scheme rules.

It is firstly important to distinguish what would make a pension sum that has been unallocated, subsequently becoming allocated and would give rise to a tax assessment on the member. This is covered by Sections 160(2), 161 and 172 to 174 Finance Act 2004 and Paragraphs 37 and 38 of Schedule 10 Finance Act 2005 and treats the payment across as an unauthorised payment.

Broadly speaking, where the pension contribution paid is in excess of the member's annual allowance it is caught as a unauthorised member payment. A further consideration is that historically in respect of controlling directors the amount so allocated in the tax year cannot exceed the persons paye earnings (subject also to the annual allowance test).

In this case, the amount to be paid into the general fund is the sum of £450,000. The Trustees intend that this payment is used to meet future pension liabilities as directed by the Company i.e. it will allow the Company to award pension credits to members without having to make a cash payment into the Scheme in that tax year.

At this time, the contribution into the general account is not earmarked in favour of the directors, or any employees of the employer so it cannot be said that the payment is to the advantage of the members - this being the backdrop to Samuel Dracup & Sons Ltd v Dakin [1957] 37 TC 377 concerning pension contributions for connected persons which failed the non-trade test.

The objective of the general fund is to permit the Company to meet future pension liabilities in respect of the funding of the discretionary scheme as it falls due. In respect of the scheme members, prospective pension liabilities are presently capped to each member's lifetime allowance.

It is the intention of the Company to provide pension benefits for its key personnel and where the prospective pension liability is retained within the business, then it could create an additional cost to the Company by the loss of investment income that would otherwise be mitigated by the funds being invested in a "tax exempt" scheme.

It would not be unreasonable to set aside a sum in a tax year permitted by the profits of the business to meet future pension liabilities. Having regard to the corporation tax profits I have been advised of in this and previous tax years, I do not consider that a scheme contribution of £450,000 could be considered as having a non-trade aspect given the above and should not qualify for tax relief under the wholly and exclusively for the purpose of trade test. If it transpires, that the money held in the general account should be refunded back to the Company where money purchase pension liabilities have been met, then that refund is paid in accordance with the regulations that apply under Occupational pension schemes (Payments to Employer) Regulations 2006 - SI 2006/802 and the Scheme would adopt such provisions, even though it is generally exempt for the most part, from Pensions Act 1995.

General Fund on Death

If it is the intention to allocate money from the general fund to Julia in future years, then in the event of her death any remaining money held in the general fund may be used to establish children(s) benefits until age 18 or 23 if in full time education. There is a general provision that may allow continuation of this, for example young adult children of the deceased member who are either continuing in further education or suffering from certain health implications at age 23 (the time the pension should otherwise stop).

I would suggest that a provision is made in the directors service contracts to provide for death in service rights and in addition, for David Nicklin to undertake a separate instruction in respect of nomination of beneficiaries held on file as the declarations only apply to the individual account. This could act as a form of death in service arrangement, which we can give scheme specific guidance on in the future.

Yours sincerely

Gavin McCloskey

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