Superannuation or Pension Fund? - Sas Ansari

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Superannuation or Pension Fund or Plan?

Jacques v The Queen, 2016 TCC 245

At issue was whether a particular 401(k) plan met the definition of "superannuation or pension fund" and therefore required to be included in income under subparagraph 56(1)(a)(i) of the *Income Tax Act*.

NOTE: It is likely that the particular outcome of this decision will be limited to this case and not even the facts. The Minister failed to lead evidence as to the legislative authority and therefore nature of the plan. This evidence will likely alter the outcome of future decisions about 401(k) plans.

ANALYSIS

ITA subparagraph 56(1)(a)(i) requires a taxpayer to include an amount received in the year "on account or in lieu of payment, or in satisfaction of a superannuation or pension benefit. A number of benefits are expressly listed as having to be included, but where the particular plan or fund is not listed, the court must determine whether it satisfies the meaning of "superannuation or pension benefit" under subsection 248(1) as "superannuation or pension fund or plan is not defined in the ITA (para 3).

The Court considered the following aspects in determining the nature of the plan:

- **The legislative authority for the plan** - by reference to the particular legislation that gives rise to the plan, so as to determine whether the plan is a savings plan or a superannuation or pension fund or plan (para 6);
- **The purpose of the plan -** nothing that the accumulation of savings is an important aspect of a retirement plan, but the mere fact that money is being saved does not indicate whether the vehicle is meant to be used to save for retirement (para 8);
- **Enrollment in the plan -** automatic enrollment, elective enrollment, or elective opt-outs are not in themselves determinative (para 10);

  Employee contribution to the plan - where the employee has the power to significantly alter the amount contributed to the plan, the vehicle appears to be a savings plan and not a superannuation or pension fund or plan (para 12);

- **Employer contrigution to the plan** - where the employer can choose whether or not to match contributions to the plan, or to what extent to contribute, is unusual as employer contributions are an automatic part of a standard workplace pension plan (paras 13-14);
- Vesting - employee contributions vesting immediately and employer contributions vesting after a period of employment is consistent with a superannuation or pension fund or plan (para 15);
- Investment - where an employee has own account, can direct how the account is invested (even if from a list of investment), with the ability to switch investments is consistent with both savings and pension plans (para 16);
- Early withdrawals - where the employee can ask to withdraw funds for purposes other than retirement suggest that the plan is a savings plan and not a retirement plan (para 17)
- Distributions out of the plan - this is seen as the most important aspect (para 18).

In *Abrahamson v. M.N.R.*, 1990 CarswellNat 534, the TCC held that “the words ‘superannuation or pension benefit’ in subparagraph 56(1)(*a*)(i) contemplate a payment of a fixed or determinable allowance paid at regular intervals to a person usually, but not always, as a result of the termination of employment for the purpose of providing that person with a minimum means of existence”. The regulatory of the payments according to the terms of the plan and not at the discretion or direction of the beneficiary is consistent with a retirement plan (para 19). See also *Woods v. The Queen*,2010 TCC 106. at paragraph 30.

This plan did not provide for anything close to a fixed or determinable allowance or regular post-retirement income, rather the default was a lump sum payment after a certain age, irrespective of whether the employee continued to work or not (para 21). The only requirement to take our regular amounts occurred when the employee had reached a certain age, had not taken out the money as a lump sum, and was still working at which point s/he was forced to take out minimum distributions (but could do so at any time) (para 21). This was not seen as enough resemblance to a fixed annual distribution, and the lump sum option more resembled a savings plan and not a superannuation or retirement fund or plan (para 22).

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