# Disputed withdrawal of a Pillar 3a account balance

Topic: **Pension products** Case number: **2020/19**

> The client continued to work after having reached the retirement age of 65 and did not want to withdraw his Pillar 3a savings held with the bank's savings 3a pension foundation. Since he neither informed the pension foundation that he was still employed nor requested a withdrawal of the account balance, the foundation terminated the pension relationship with the client and reported this to the tax authorities. This led to undesirable tax consequences for the client. After the Ombudsman had contacted the bank and its pension foundation, the latter was prepared to provide the client with a written statement on the incident, which the client could forward to the tax authorities. The tax authorities then corrected the tax assessment in the client's favour.

In view of reaching the normal retirement age of 65, the bank's pension foundation informed the client in writing that he must either withdraw his Pillar 3a assets by submitting a confirmation of residence or inform the foundation that he would continue to be employed, in which case he could postpone the withdrawal for a maximum of another five years. The client stated that he had never received this letter and had not contacted the pension foundation. The foundation terminated the pension relationship on the basis of a provision in its pension regulations and transferred the money on his behalf to an account of the foundation, as it was not in possession of account details for transferring the money to the client. At the same time, the foundation filed a tax notification and informed the client about the transactions.

He immediately contacted the bank. The bank staff were helpful, but told him that the transaction could not be cancelled. He would have to open a new Pillar 3a account into which the amount would be paid again. They hoped that this would prevent the amount from being considered withdrawn for tax purposes. The client had already withdrawn pension funds in the tax year in question and this was the reason why he wanted to keep the amount in the pension circuit at all costs. However, the tax authorities assumed a withdrawal on the basis of the foundation's tax notification and issued the client with a corresponding tax assessment. The amount paid into the newly opened Pillar 3a account, on the other hand, would have been classified as tax deductible. However, this was of no use to the client, as he had already made the possible Pillar 3a deposit for the tax year in question with another pension foundation prior to the events due to his relatively modest income.

He therefore asked the pension foundation to correct what he considered to be an incorrect tax notification. Unfortunately, his letter remained unanswered and he turned to the Ombudsman. The Ombudsman contacted the pension foundation and asked it to reply to the client's letter. In its reply to the client, the pension foundation referred to the provisions of its pension regulations and explained that, in its view, the transaction necessarily entailed a tax declaration and the tax consequences perceived as disadvantageous by the client. Since, in their view, there was no misconduct on their part, they were not prepared to make any concessions.

The Ombudsman then contacted the pension foundation and informed it that, in his opinion, the issue in this case was not to establish if and where errors had been made, but to rectify a situation that was unfavorable for the client. He also pointed out that, in his opinion, it was not up to the bank or its pension foundation to determine the tax consequences of the transactions. As the tax authorities had already indicated their willingness to reassess the situation, he asked the pension foundation to confirm to the client, for the attention of the tax authorities, that the client had not given an order to pay out his Pillar 3a assets and that the cancellation of the pension contract had only taken place on the basis of its regulations. In the Ombudsman’s view, this was possible without any disadvantages for the pension foundation. It finally agreed to this solution. The client handed over the confirmation issued by the foundation to the tax authorities. The Pillar 3a assets were finally not taxed in the current year and were treated as if they had not left the pension circuit. The client subsequently expressed his sincere thanks for the Ombudsman’s efforts.