Withdrawal of Pillar 3a assets for payment into the pension fund

Topic: **Pension products** Case number: **2018/26**

> The customer wanted to withdraw her Pillar 3a balance and pay it into the pension fund (Pillar 2). She accused the bank of not having performed this transaction in the most tax-efficient way for her and her husband. She asked the bank to retrospectively document the transaction in such a way as to obtain the desired result for tax purposes, or to compensate her for the tax liability incurred. The bank expressed the view that it had processed the transaction in accordance with the instructions and refused to retrospectively document it any differently. In the absence of any corresponding instruction, the bank did not feel it was obliged to advise the customers on tax matters. The customers then referred the matter to the Ombudsman. The latter had to disappoint them as, in his view, there was no misconduct on the part of the bank.

The complainants were a couple jointly assessed for tax purposes. They claimed that the wife had held a Pillar 3a account with the bank’s pension foundation. Their tax advisor advised them to withdraw this account balance on the basis that they had already reached the age for an ordinary withdrawal, and immediately pay it back into their Pillar 2 account, thereby benefiting from the tax deductions on the sum paid into their pension fund when it came to income tax. The bank documented the procedure as though a tax-neutral transfer had been made from Pillar 3a to Pillar 2 however. The customers argued that the bank should have told the wife about the tax consequences of the two withdrawal options and should have ensured that the variant that would be the most tax-efficient for the spouses as a jointly assessed couple was chosen. As this was not done, they were now asking the bank to retrospectively document the transaction in this way and to issue the necessary confirmations so they could still achieve the desired result in terms of tax. Alternatively, they claimed the bank would need to compensate them for the tax liabilities of several thousands of Swiss francs incurred.

In its response to the customers’ corresponding complaint, the bank maintained that the process had been performed in accordance with the wife’s instructions. In the absence of a corresponding instruction, the bank stated that it was not obliged to offer tax advice and that the customers had not taken advantage of the payable pension advice offered by the bank prior to the incident. The bank believed that it was for the customers’ tax advisor at the time to offer tax advice and denied the allegation that it had provided incorrect advice. Since the instructed transaction was tax-neutral, the bank was unable to retrospectively draft a tax report documenting an alleged payment of Pillar 3a assets due to attaining withdrawal age because this would not reflect the actual facts in the case.

Based on this premise, the Ombudsman took the liberty of making the following comments: in his experience, transfers from Pillar 3a to Pillar 2 are common and are usually tax-neutral operations. In his opinion, the bank and its pension foundation had been clearly instructed by the wife, in accordance with the written instruction, here to perform such a direct transfer of Pillar 3a assets to Pillar 2.

Given the wife’s age, she would also have been able to withdraw the Pillar 3a assets, in other words withdraw them from the pension system, and then immediately pay these back into her pension fund. According to the customers as a jointly assessed couple, in spite of the tax consequences upon the withdrawal, this variant would have been significantly more tax-efficient due to the ability to deduct the sum paid into Pillar 2 from their income. This second variant was probably the one also intended by their tax advisor when he issued his advice.

For the Ombudsman, the question was whether or not the bank was obliged in this case to enquire further into the background of the requested transaction in connection with the instruction given and, on the basis of that, to suggest the more tax-efficient variant for the customers. Such advice is usually provided by the bank through special departments based on contracts concluded in writing and in return for a separate fee. The Ombudsman could therefore understand the bank’s assertion that it was not obliged to offer such advice, especially since the customers had not taken advantage of the pension advice offered by the bank.

Finally, it seemed clear to the Ombudsman that the bank could not retrospectively provide documentation recording a different transaction to the one specified in the instruction and processed so that the operation could be assessed in a way that was potentially more favourable for the customers in terms of tax. This would not be permitted and by doing so, the bank would expose itself and its staff to significant regulatory, and possibly even criminal risks. Since, in the Ombudsman’s view, there was no misconduct on the part of the bank, the claim for compensation for the tax liability was also not open to mediation.

The Ombudsman understood the customers’ disappointment regarding the tax consequences of the transaction but had no choice but to discontinue the proceedings, in light of the bank’s clear position and the considerations set out above, with a concluding notice to the customers.