



Taxable Property

SIPP - Technical Note



Technical note

'Taxable property' HM Revenue & Customs (HMRC) introduced its "taxable property" rules with effect from 6 April 2006 and these can cause quite a few problems for a Self-Invested Personal Pension (SIPP) in relation to investing in unquoted companies or other vehicles.

Taxable property includes residential property and tangible moveable property such as plant and machinery and other equipment, fixtures and fittings in buildings that are not part of the 'fabric of the building' (which includes such items as carpets, other floor coverings, light fittings and furniture) cars, yachts, fine wine, jewellery, antiques and paintings. Tangible moveable property does not include investment grade gold bullion.

'Direct investment' in taxable property is not permitted because it would automatically constitute an "unauthorised payment" and give rise to tax penalties.

'Indirect investment' in taxable property will also constitute an unauthorised payment and give rise to tax penalties unless the investment satisfies certain exemption criteria, details of which are set out below. An indirect holding in taxable property can be by way of shares in, rights to shares in, or a loan to a company or other "vehicle" which holds (directly or indirectly) such property.

For example, a SIPP member may wish their SIPP to invest in shares in an unquoted trading company and the company's assets include residential property, cars and lorries (all of which would fall within the definition of taxable property). If the relevant exemption criteria listed below are not satisfied and the SIPP acquires shares in the company, the SIPP will be deemed to be investing in that taxable property and the SIPP member and the SIPP will be taxed accordingly.

EBS will only consider allowing an investment in shares in, or loans to, an unquoted company or other vehicle provided the relevant exemption criteria are satisfied.

Exemptions from the taxable property rules

An asset with a market value no greater than £6,000 and it is held solely for the purposes of the administration or management of the company/vehicle that holds it directly and neither a scheme member, nor anyone connected with a scheme member has use of that asset.

Trading concerns

Indirect holdings in taxable property through a company/vehicle that is a trading concern (whether unquoted, listed on the Alternative Investment Market (AIM) or fully quoted), which satisfy all of the following four criteria, are exempt from the taxable property rules:

1. The company's/vehicle's main activity is the carrying on of a trade, profession or vocation.
2. The SIPP member either alone or together with associated persons does not have control of the company/vehicle.
3. Neither the SIPP member nor a connected person is a controlling director of the company or any other company or vehicle which holds an interest in the company directly or indirectly.
4. The SIPP does not hold an interest in the company/vehicle to allow the SIPP member or a connected person to occupy or use taxable property.

Non-trading concerns

Indirect holdings in taxable property through a company/vehicle that is not a trading concern (whether unquoted, AIM or fully quoted), which satisfy all of the following criteria, are also exempt from the taxable property rules:

1. The total value of the assets held directly by the company/vehicle is at least £1,000,000, or, the company/vehicle holds at least three residential properties, and, in either case, no single directly held item of taxable property has a value of more than 40% of the total value of directly held assets.
2. If it is a company and resident in the United Kingdom, it is not a close company.
3. If it is a company and not resident in the United Kingdom, it would not be a close company if it were resident in the United Kingdom.
4. The company/vehicle does not have as its main purpose, or one of its main purposes, the direct or indirect holding of animals used for sporting purposes.
5. The SIPP's interest in the company/vehicle is not to enable the member or a connected person to occupy or use taxable property held directly or indirectly by the company/vehicle.
6. The SIPP's interest in the company/vehicle, when aggregated with the interests of any associated persons in the company/vehicle is at any time, less than any of the following limits:
 - 10% or more of the share capital or issued share capital of the company/vehicle
 - 10% or more of the voting rights in the company/vehicle
 - A right to receive 10% or more of the income of the company/vehicle
 - Such an interest in the company/vehicle as gives an entitlement to 10% or more of the amounts distributed on a distribution in relation to the company/vehicle
 - Such an interest in the company/vehicle as gives an entitlement to 10% or more of the assets of the company/vehicle on a winding up or in any other circumstances
 - Such an interest in the company/vehicle as gives rise to income and gains derived from a specific property

If at any time an investment fails to satisfy the above exemption criteria and the company/vehicle holds taxable property, the SIPP investment will immediately become subject to the taxable property rules and tax penalties will apply to both the SIPP member and the SIPP itself. See TAX CHARGES below.

HMRC reporting requirements

As direct or indirect investment in taxable property constitutes an unauthorised payment, it must be reported by EBS to HMRC in an online Event Report no later than 31 January following the tax year in which the investment was made or an exemption was lost. You must inform us immediately if you believe an exemption has been, or may be lost.

Borrowing

HMRC has indicated that unless the company/vehicle has assets of over £1 million and the SIPP's interest in the vehicle, when aggregated with the interests of any associated persons, is less than 10% of the company/vehicle then any borrowing undertaken by the company/vehicle could be taken into account when calculating the SIPP's maximum authorised borrowing limit at any time. The maximum authorised borrowing for a member's SIPP is 50% of the net market value of the SIPP fund just before any borrowing is to take place. If this maximum is exceeded the scheme administrator will be liable for a tax charge of 40% of the excess.

What are EBS's requirements to allow a member's SIPP to invest in an unquoted company or other vehicle?

EBS will normally allow up to 30% of a member's SIPP fund to be invested in unquoted companies/vehicles subject to the following

- Full details of the proposed investment must be provided, with a completed questionnaire and letter of indemnity.
- EBS is able to satisfactorily verify the identity of the company/vehicle.
- The proposed investment satisfies the relevant criteria for exemption from the taxable property rules as detailed above and the member can demonstrate that they will be maintained for the duration of holding the investment.
- If the investment it is to be bought from the SIPP member or a connected person, an independent professional valuation.
- There are sufficient liquid funds in the member's SIPP.
- Providing any application/subscription form(s) and associated documents (e.g. shareholders' agreement, loan agreement, investment prospectus/memorandum).

Please note:

- In its online Pensions Tax Manual, HMRC states that a loan is only acceptable if it is a genuine investment of the pension scheme and it should be prudent, secure and on a commercial basis. Therefore, the SIPP member will need to take appropriate professional advice when considering such an investment for his or her SIPP.
- EBS will not allow a SIPP to make a loan to any individual.
- Any security given in relation to a loan must not be nor have the potential to become taxable property.
- EBS may allow more than 30% of the net market value of a member's SIPP fund to be invested in unquoted companies/vehicles where the proposed investment is in the form of a loan to an unconnected UK limited company or UK Limited Liability Partnership, which is a trading concern, which is secured by way of a first charge, in favour of the SIPP trustees, on an unencumbered commercial property owned by the borrower and the loan does not exceed 75% of the market value of that commercial property at that time and there are sufficient funds in the SIPP. The market value of the property must be confirmed in writing by an independent professional surveyor. However, the loan documentation would need to allow the SIPP trustees to call in the loan or force the sale of the property at any time if required to meet any liabilities e.g. payment of benefits in the event of the SIPP member's death.
- In the case of company shares, if the vendor of the shares is the SIPP member or a person connected with the SIPP member, EBS will require written confirmation, addressed to the SIPP Trustees, of the current market value of those shares from a suitably qualified independent professional. In the absence of such an independent professional valuation, EBS will need to carry out its own due diligence to establish whether the proposed purchase price is the market value and so we will require a copy of the company's most recent accounts and copies of any other information on which the purchase price of the shares has been based.

Tax charges

The tax charges associated with the taxable property rules can be substantial. The main tax charges are as follows:

- 40% of the market value of the scheme's indirect interest in the taxable property held by the company, for which the member(s) would be liable, plus
- 15% of that value as a surcharge if certain limits are breached, for which the member(s) would be liable, plus
- 15% to 40% of that value for which the scheme administrator would be liable, plus
- 40% tax charge on the scheme administrator in respect of any income or deemed income received in relation to the asset and any capital gains on disposal of the asset, plus 40% of the market value of all scheme assets if HMRC de-registers the scheme for which the scheme administrator would be liable.

HMRC guidance on indirect holdings in taxable property and details of the tax charges that can apply is available on its online Pensions Tax Manual which starts at the following link: <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm125400>.

Definitions

“Associated person” includes the SIPP member, any connected person, the member's SIPP and any other pension arrangement relating to the member or a connected person.

“Close company” means as defined in section 439 of the Corporation Tax Act 2010. Broadly, it is a company:

1. which is under the control of five or fewer participators or any number of participators if those participators are directors; or
2. more than half the assets of which would be distributed to five or fewer participators or to participators who are directors, in the event of the winding up of the company.

“Connected person” is defined in section 1122 of the Corporation Tax Act 2010 and includes the following:

- The SIPP member, the member's spouse/civil partner, a direct relative [*] of the member of the member's spouse/civil partner and the spouse/civil partner of a relative of the member or the member's spouse/civil partner [* relative includes ancestors, brothers, sisters or lineal descendants]
- A trustee of a settlement where the settlor of the settlement is the member or someone connected with the member
- A person (or that person's spouse/civil partner or relative) who is in partnership with the member or with the member's spouse/civil partner or relative
- A company, which is controlled by the member and/or persons connected with the member

[Please note for HMRC reporting purposes connected person also includes close companies of which a member or person connected with a member is a director.]

“Control” (sections 450 and 451 of the Corporation Tax Act 2010) - a person has control of a company if that person exercises, is able to exercise, or is entitled to acquire, direct or indirect control over the company's affairs.

“Controlling director” means a 'director' to whom section 452(2)(b) of the Corporation Tax Act 2010 applies but reading the reference to associates in section 452(3) of that Act as including associated persons.

Definitions

'Director' includes any person occupying the position of director by whatever name called and any person in accordance with whose directions or instructions the directors are accustomed to act. It also includes any person who:

1. is a manager of the company or otherwise concerned in the management of the company's trade or business, and
2. is either on his/her own or with one or more associates the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means, to control not less than 20% of the ordinary share capital of the company.

The expression 'with one or more of his or her associates' means that a person is treated as owning or, as the case may be, controlling, what any associate owns or controls, even if he or she does not own or control share capital of his or her own.

"Trading concern" means a company or vehicle whose main activity is the carrying on of a trade, profession or vocation.

"Vehicle" means a person or entity through whom the pension scheme holds property.

This document is based on EBS Pensions Limited interpretation of pension tax law, existing law, H M Revenue & Customs published guidance as at the date of this document and proposed changes to pension tax legislation, all of which may be subject to change. While we believe this interpretation to be correct, EBS Pensions Limited can give no guarantee in this respect.

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