



EBS Technical Note

SSAS - November 2016

SSASs are not regulated by the Financial Conduct Authority.

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EBS SSAS TN 06/18

Investment in shares in, or loans to, an unquoted company or other vehicle.

Before investing in the above, the Trustees of a Small Self-Administered Scheme (SSAS) who in most cases will also be the Scheme Administrator for tax purposes should take into account whether the rules relating to one or more of the following four types of investment under the current pension tax legislation might apply. If the rules do apply and the investment fails to satisfy those rules or any relevant exemption criteria, then tax charges will arise on both SSAS members in their personal capacity (or a sponsoring employer of the SSAS) and the SSAS itself by way of the Scheme Administrator.

1. Taxable property
2. Shares in a sponsoring employer
3. Loan to a sponsoring employer
4. Loan to a SSAS member or person connected with a SSAS member (other than a sponsoring employer)

Please note all purchases and sales between the SSAS Trustees and a sponsoring employer, SSAS member or a person connected with a SSAS member should be at market value as confirmed in writing by a suitably qualified independent professional.

1. Taxable property

HMRC introduced its “taxable property” rules with effect from 6 April 2006 which can cause quite a few problems for SSASs.

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 or 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.

Direct investment in taxable property is not prohibited but many, if not all, of the tax charges listed below under the sub-heading TAX CHARGES would apply. Therefore, such investment should be avoided.

Indirect investment in taxable property is the real danger, as it could happen without the SSAS Trustees even realising it. Again many, if not all, of the tax charges listed below under the sub-heading TAX CHARGES would apply. An indirect holding in taxable property can be by way of shares in, rights to shares in, or a loan to a “vehicle” which holds (directly or indirectly) such property.

For example, a SSAS may wish 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 SSAS acquires shares in the company, the SSAS will be deemed to be investing in that taxable property and the SSAS member(s) and the SSAS will be taxed accordingly.

Exemption from the taxable property rules

Trading concerns

Indirect holdings in taxable property via a company or other “vehicle”, which is a “trading concern” (whether unquoted, AIM or even 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 SSAS member either alone or together with "associated persons" does not have “control” of the company/vehicle.
3. Neither a SSAS member nor any person connected to such a member (“connected person”) is a controlling director of the company/vehicle or of any other company or vehicle which holds an interest in the company/vehicle directly or indirectly.
4. The SSAS does not directly or indirectly hold an interest in the company/vehicle for the purposes of enabling a SSAS member or a connected person to occupy or use taxable property.

Non-trading concerns

Indirect holdings in taxable property via a company/vehicle, which is not a trading concern (whether unquoted, AIM or even fully quoted), which satisfy all of the following criteria, are 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 asset held directly which is taxable property, has a value in excess of 40% of the total value of assets held directly.
2. If a company and it is resident in the United Kingdom, it is not a “close company”.
3. If a company and it is 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 an animal(s) used for sporting purposes.
5. The SSAS'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 SSAS'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

Please note if at any time an investment by way of shares in and/or loans to a company/vehicle fails to satisfy the above exemption criteria and the company/ vehicle holds taxable property, the SSAS's investment will immediately become subject to the "taxable property" rules and tax penalties will apply to both the SSAS members and the SSAS itself. See section on Tax Charges below.

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 SSAS trustees will need to take appropriate professional advice when considering such an investment for the SSAS.

Borrowing

Please note HMRC has indicated that borrowing by the company/vehicle, in which the SSAS holds an interest, is unlikely to be taken into account in assessing the SSAS's maximum authorised borrowing limit provided it is clear that the SSAS is not using the investment in the company/vehicle as a means of circumventing the authorised borrowing limit.

The maximum authorised borrowing for a SSAS is 50% of the net market value of the SSAS fund just before any borrowing is to take place. If this maximum is exceeded the SSAS Trustees (as the scheme administrator) will be liable for a tax charge of 40% of the excess.

2. Shares in a sponsoring employer

Investment in shares of a "sponsoring employer" by a SSAS, at the time of purchase, will only constitute an authorised payment provided the market value of the shares, together with the market value of any shares already held in that sponsoring employer, represents less than 5% of the total net market value of the SSAS assets.

In addition to the above limit in respect of a single sponsoring employer, investment in shares of sponsoring employers, at the time of purchase, will only constitute an authorised payment provided the total market value of shares held in sponsoring employers is less than 20% of the total net market value of the SSAS assets.

If investment in such shares breaches these limits then the sponsoring employer will be liable for the unauthorised payment charge (40%) and any unauthorised payment surcharge (15%) on the excess and the SSAS will be liable for the scheme sanction charge (15% - 40%). In addition, the SSAS could lose its registered scheme status and be liable for the de-registration charge of 40% of the market value of the SSAS assets remaining after all the other tax charges have been paid.

Please note the taxable property rules also apply to shares in a sponsoring employer.

Please note under Department for Work and Pensions (DWP) legislation such shares constitute an 'employer-related investment'. That legislation restricts investment in shares in all sponsoring employers, when aggregated with any other 'employer-related investments' (which include loans to employers and property leased back to employers) to 5% of the total net market value of the SSAS assets unless there are fewer than 12 members of the SSAS, all members of the SSAS are also Trustees of the SSAS and the Trustees' decision to invest is unanimous.

In view of the above restrictions it is unlikely that many SSASs will either be in a position to invest in shares of a sponsoring employer or wish to.

3. Loans to a sponsoring employer

A loan made to a sponsoring employer by a SSAS will only be an 'authorised employer loan' (and therefore not give rise to any tax charges) if it satisfies the following conditions:

- The borrower is a sponsoring employer as defined in section 150(6) of Finance Act 2004.
- When aggregated with any outstanding loans to sponsoring employers, it does not exceed 50% of the net market value of SSAS assets immediately before the loan is made.
- It must be secured by way of a first charge on any asset owned by the sponsoring employer, or some other person, of at least equal value to the loan and all interest to the end of the term.
- The term of the loan must not exceed 5 years.
- Repayment of the loan must be by way of equal instalments of capital and interest for each complete year of the loan.
- A commercial rate of interest must be charged.

Please note an authorised employer loan which is used to acquire taxable property will only be exempt from the taxable property rules provided it satisfies the following further conditions:

- a) the interest in the taxable property is acquired so that the property may be used for the purposes of a trade, profession or vocation carried on by the sponsoring employer or for the purposes of the sponsoring employer's administration or management, and
- b) after the acquisition, the property is not occupied or used by a member of the SSAS or a person connected with a member.

Please note that Department for Work and Pensions (DWP) legislation prohibits loans to sponsoring employers unless all members of the SSAS are also Trustees of the SSAS and the scheme's trust deed and rules require all Trustee decisions to be by unanimous agreement.

Guidance notes on the rules relating to loans to sponsoring employers are available on request from EBS.

4. Loans to a SSAS member or a person connected with a SSAS member (other than a sponsoring employer)

A loan to anyone (including an individual or a company*) other than a sponsoring employer, who is a SSAS member or is connected with a SSAS member would automatically constitute an unauthorised payment and give rise to an unauthorised payment charge and possibly an unauthorised payment surcharge on the SSAS member(s), a scheme sanction charge on the Scheme Administrator and possibly a de-registration charge on the Scheme Administrator.

[*For example, a loan to a company which is controlled directly or indirectly by a SSAS member which neither participates in the SSAS nor has contributed to the SSAS for any of its employees, is likely to be an unauthorised payment.]

HMRC Reporting Requirements

As direct or indirect investment in taxable property constitutes an unauthorised payment, it must be reported by the Scheme Administrator to HMRC in an online Event Report no later than 31 January following the tax year in which the unauthorised payment was made.

Details of the Event Report can be found on the HMRC website at the following link:
<http://www.hmrc.gov.uk/pensionschemes/psr-aft-event.htm>

Details of loans and share investments (particularly loans to and shares in sponsoring employers and where shares have been acquired from a member or connected person) may also be required on an annual basis as part of the Pension Scheme Return, which most, if not all, SSASs will be required to file.

Details of the Pension Scheme Return can be found on the HMRC website at the following link:
<http://www.hmrc.gov.uk/pensionschemes/psr-aft-event.htm>

Definitions

Associated person includes the SSAS members, the SSAS, any connected person, any other pension arrangement relating to a member or a connected person, and any pension scheme where the members of the SSAS and or connected persons are also members and represent at least 10% by value of that pension scheme.

Close company means as defined in section 439 of the Corporation Tax Act 2010. Broadly, it is a company: (a) which is under the control of five or fewer participators or any number of participators if those participators are directors; or (b) 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 SSAS member, the member's spouse/civil partner, a relative* of the member or 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 parents, brothers, sisters, or offspring]
- 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 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'.

'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:

- (a) is a manager of the company or otherwise concerned in the management of the company's trade or business, and
- a) 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' [see definition of associates above] 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.

Sponsoring employer (section 150(6) Finance Act 2004), in relation to any registered occupational pension scheme (including a SSAS), means any employer, to or in respect of any or all of whose employees (which includes directors) the scheme has, or is capable of having, effect so as to provide benefits.

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.

Tax Charges

The tax charges associated with the taxable property rules can be severe:

Unauthorised payment charge: 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 personally liable, plus

Unauthorised payment surcharge: 15% of the market value (as above) as a surcharge if certain limits are breached, for which the member(s) would be personally liable, plus Scheme sanction charge: 15% to 40% of the market value (as above) for which the Scheme Administrator would be liable, plus

Income tax and capital gains tax: 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

De-registration charge: 40% of the net market value of all scheme assets on the day before registered status was withdrawn, if HMRC de-registers the scheme, for which the Scheme Administrator would be liable.

Details of and examples of how these tax charges are calculated can be found on HMRC's website within its Pensions Tax Manual at the following link: <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm131000#IDAFFJMD>

This document is based on EBS Pensions Limited interpretation of pension tax law, existing law and HM Revenue & Customs' published guidance as at the date of this document, 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.

This document is solely for information purposes and should not be construed as investment or financial advice. Individuals should seek such advice from their own professional advisers.

The tax treatment of pensions depends on individual circumstances and may be subject to change in future.

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