

SSAS

Small Self-Administered Scheme

Employer Loan Guidance Notes



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These guidance notes provide information on making a Loan from a SSAS to a Sponsoring Employer based on our understanding of the HMRC Pension Tax Manual reference PTM123000. Please read PTM123000 and these notes before completing the accompanying SSAS Employer Loan Application Form.

Small Self Administered Schemes (SSAS) are authorised to make Loans to a Sponsoring Employer however HM Revenue and Customs only allow Loans if they are genuine investments that are prudent, secure and on a commercial basis.

Loans cannot be made to the following parties:

1. Scheme members and their relatives or connected parties.
2. Companies controlled by scheme members and/or their relatives and business associates which do not participate in the pension scheme.
3. Partnerships in which scheme members and/or their relatives are partners (this includes LLPs).

To make a Loan to a Sponsoring Employer the company must be trading and the Loan must be for trading purposes. It must not be solely to keep an ailing business afloat or be made to Sponsoring Employers who are technically insolvent.

Trustees must also take all available legal steps to enforce the repayment of a Loan, if an employer breaches the conditions of the Loan agreement, ceases to carry on business or becomes insolvent. There must be no preferential treatment given to a Sponsoring Employer of the pension scheme when enforcing the collection of the debt, even if this involves the company being placed into liquidation.

There are five key tests that a Loan must satisfy to qualify as an authorised employer Loan. If a Loan fails to meet one or more of these tests an unauthorised payment charge will apply from HMRC.

The five key tests are as follows:

1. Security

The amount of the Loan must be secured throughout the full term by a first charge on any asset which is at least equal to the value of the Loan, including interest at the time the Loan is being made.

Please note that security to be provided must be a specific asset. We will not accept a Fixed and Floating Charge over all company assets.

If the security given includes “taxable property” (i.e. residential property and/or tangible moveable assets) it will create an interest in taxable property. This would constitute an unauthorised payment and would mean that both the SSAS Trustees and the SSAS members would be liable for tax charges under the “taxable property” rules. However, this

charge would be in relation to the amount of consideration given for the interest, which may only be the amount of any fees or costs in connection with the acquisition of the interest. In order to avoid this we require that all costs in relation to putting the security in place are settled by the Borrower.

If the employer defaults on the terms of the Loan and the Trustees are required to enforce their charge then at this point the Trustees become the owners of taxable property and unauthorised tax charges will become payable. To avoid this you will also need to ensure that the solicitor drafting the loan agreement inserts a clause that would enable the scheme Trustees to appoint Law of Property Act (LPA) Receiver if the loan defaults and the charge has to be called in.

The Trustees of the SSAS are also to be named as “Composite insured” on the insurance of the property given as security.

2. Interest Rate

Interest must be charged at a commercial rate of interest. You will need to obtain evidence from a bank of the commercial rate which they would apply to a Loan if they were providing it on the same terms.

3. Term of the Loan

The repayment period must be no longer than 5 years from the date the Loan was advanced.

4. Maximum Amount of the Loan

The maximum amount of the Loan (or combined Loans if Loans have been made previously) which can be made to all sponsoring employers is restricted to 50% of the net asset value of the pension scheme.

5. Repayment Terms

All Loans to employers must be repaid in equal instalments of capital and interest for each complete year of the Loan (known as a Loan year).

It will be necessary to provide us with an independent open market valuation of the asset to be used as security and the pension scheme Trustees will need to appoint a solicitor to act on their behalf to produce a suitable Loan Agreement and Legal Charge.

We will also need a letter from an accountant confirming the borrower’s ability to repay the Loan on the terms stated on the SSAS Employer Loan Application Form.

Please note we will be unable to forward funds to the company until the Loan Agreement and Legal Charge are in place and we have received the independent open market valuation and accountant’s letter stated above and any other documentation we may reasonably require.

The terms and conditions of the Loan must be properly documented. DP Administration Ltd will provide guidance to your solicitor however your solicitor will need to prepare the Loan Agreement which must be signed on behalf of the company and by all of the scheme trustees as well as preparing the Legal Charge and registering it.

Additional Notes

1. “Taxable property” rules and purpose of the Loan

Under current legislation which came into force 6th April 2006, severe tax charges are imposed on a SSAS that invest directly or indirectly in “taxable property”, i.e. residential property and tangible moveable property such as cars, jewellery, wine, antiques, etc., but also including other assets used in the administration and management of the Sponsoring Employer’s business, such as computer systems and plant and machinery, which have a value in excess of £6,000.

A Loan to an employer to fund the acquisition of “taxable property” could therefore have unintended and unwelcome tax implications for SSAS Trustees unless it satisfies the following conditions:

- a) the Loan is an authorised employer Loan made by a pension scheme to or in respect of a sponsoring employer
- b) the interest in the 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
- c) after the acquisition, the property is not occupied or used by a member of the pension scheme or a person connected with such a member.

If you wish to proceed with a Loan from the pension scheme please complete the SSAS Employer Loan Application Form and return it to us with an independent open market valuation of the security being granted for the Loan and a letter from the company accountant confirming the borrower’s ability to repay the Loans under the proposed terms detailed in the application form.

Useful Links

- <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm123000>
- <http://www.legislation.gov.uk/ukpga/2004/12/contents>

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