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IN SPECIE CONTRIBUTIONS

Whilst the concept of an in specie contribution is straight-forward, the practicalities are less so. **Whilst this leaflet sets out the HMRC position, our position at MW Pensions is that we will NOT allow in specie contributions.**

RPSM 05101020 stipulates that contributions need to be a monetary amount to qualify for tax relief. RPSM 05101045 goes further and says that simply requesting assets to be taken into a scheme does not qualify for tax relief. However, if an individual first agrees to pay a monetary amount, then this “debt” can be settled by way of a transfer of assets and in so doing can be treated as a contribution for tax relief purposes.

In other words, a legal “debt” must first be created between the scheme and the entity making the “in specie” contribution – normally the member or the employer.

What is the process?

Consider a member who personally owns a commercial property worth £47,000 who wants to pay it into their SIPP as an in specie contribution. They need to agree, in writing, with the SIPP Administrator that they will make a personal contribution of £47,000. This will be a legal document that records the “debt” due from the member to the scheme.

An independent valuation of the property will be needed (as it is effectively a “connected party” transaction) confirming the value at £47,000.

The lawyers (on both sides i.e. the member’s lawyer and the trustee’s lawyer) will need instructing and the property will be transferred from the member’s ownership to the SIPP trustee’s ownership when contracts are exchanged. It will be the date that the contracts are exchanged which will be the date that the

In specie contribution will have been deemed to be made – known as the “trade date”. This gives rise to a number of questions:

Is Stamp Duty payable:

Yes. It is classed as a change of legal owner and SDLT will be due on the full amount as at the trade date if the amount is above the SDLT threshold.

What about Capital Gains Tax?

The member will be subject to personal CGT on the “sale” of property, this being calculated as at the “trade date”

What tax relief is given?

It will be treated as a personal “net” contribution of £47,000, so the SIPP administrator would reclaim the basic rate tax on the £47,000 and the member would claim their higher marginal rate tax rebate on their next annual tax return. Care must be taken to ensure that the grossed up personal contribution does not exceed 100% of the member’s net relevant earnings. There is the additional complication that, for those earning more than £130,000, tax relief on contributions may be restricted if the contribution is made prior to 6th April 2011. They should take advice from their financial advisor and/or Accountant.

What if the value of the transferred assets is less than the specified monetary amount?

If the property had been valued at say £45,000, the member will be legally bound to pay a further £2,000 into their SIPP as a contribution (eligible for tax relief of course, subject to HMRC restrictions). HMRC expect interest to be applied to the shortfall of £2,000 if there is a delay in it being paid – their guideline being that if in normal commercial circumstances interest would be payable, then interest should be charged.

<p>Commonsense will however prevail if, say, there is a small shortfall that would be costly to collect; it can then be ignored eg if the shortfall was say £10 or £50.</p> <p>What if the value of the transferred assets is more than the specified monetary amount?</p> <p>Suppose the valuation came out at £50,000. Option 1 would be for the SIPP to reimburse the member £3,000 in cash: in this case only £47,000 would be eligible for tax relief. Option 2 would be for the member to opt to leave the extra £3,000 in the SIPP as a further “cash” contribution, in which case tax relief on £50,000 could be claimed, subject to HMRC restrictions.</p> <p>Comments</p> <p>HMRC have clearly made a mountain out of a molehill here. Any SIPP trustee will naturally be wary of agreeing a formal “debt” with a member – they and the member will want to be certain there will be no shortfall.</p>	<p>What it has proved to mean in practice is that very few in specie contributions are made. As stated above, because of these complications MW Pensions, like the vast majority of SIPP Providers, will not allow in specie contributions.</p> <p>If, despite the problems, an “in specie” contribution is to be made, the best way will probably be to have an informal valuation of the property (or whatever asset is to be paid as an in specie contribution) before the formal debt is set up and then have the valuer issue the valuation formally when the property is exchanged. Both parties will need reassurance from the valuer that they do not expect any material change in their valuation during that period - which will need to be kept as brief as possible.</p>
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