

SSAS –Guide to property purchase and lease

Introduction

Trustees of Registered Pension Schemes are subject to certain requirements imposed on us by HM Revenue & Customs (HMRC) and these requirements must be strictly adhered to. For the purpose of these notes, the term “property” also includes land.

The Property

Currently investment in property or land must be of a commercial nature. Investment directly in residential property is not allowed. Investment in residential property must be via a "suitably diverse commercial vehicle" – basically no one investor (or connected party) can own more than 10%. See our leaflet on Residential Property for more details on what is classed as Residential Property and for information on the structures required to invest in residential property.

A residential property to be converted into commercial property must have its change of use confirmed before purchasing the property.

Adjacent property to any property owned by a member or connected person will require special consideration.

Development land, agricultural land and woodland are acceptable investments. HMRC may treat the fund for taxation purposes as if it were trading, if trustees develop property regularly.

Short term leasehold property will not normally be acceptable but freehold property and properties on a long lease are acceptable.

Properties with a history or potential for contamination problems are unlikely to be accepted. An environmental report is required prior to purchase.

Give us advance warning of any purchase of property at auction because special considerations apply.

Property is a long term investment. Special considerations apply if any members are over 65 or have commenced to receive benefits.

All members must agree in writing to the purchase of a property. We reserve the right to refuse to agree to the purchase of a property if it is not a suitable investment for a SSAS.

The legal owners will be jointly **Moores Williams Trustees Ltd.** and all the member trustees of the Scheme.

Special considerations apply if the Scheme is considering jointly purchasing the property with another party.

The trustees will need to appoint a solicitor to carry out conveyancing. However, we strongly recommend you use solicitors who are familiar with the requirements of HMRC and the Scheme Rules and charge competitive fees.

There must be sufficient cash in the Scheme bank account to cover the purchase and associated costs.

Property transactions involving connected parties must be reported to the HMRC.

Valuation reports

No purchase can be completed without a surveyors report that is less than 6 months old. The Trustees must instruct a surveyor who must be RICS qualified.

Where the purchase is being financed with the assistance of a mortgage the lender may require the valuations to be carried out by certain firms.

Tenants

The trustees should lease the property to ensure an income for the Scheme. The rent payable and the lease terms must be assessed independently by a chartered surveyor. A lease must be enforced and should normally be a full repairing and insuring lease.

You will be responsible for the management of the property on behalf of the trustees and for collection of rent and adherence to the terms of the lease. We strongly recommend you employ a property management company to take care of this.

We reserve the right to appoint a property management company if we experience difficulty if a scheme member is appointed as the nominated property manager.

HMRC insists we ensure that rent is received promptly. The trustees must always enforce the lease, particularly when the tenant is connected. Rent must be paid directly into the Scheme bank accounts.

Lease

Existing leases, when the property is purchased, will normally be taken over by the trustees. A solicitor must be appointed if a new lease is required. We recommend that rent is collected by standing order. Once again we recommend that you use solicitors who are familiar with the governing scheme documentation and our requirements.

Rent Reviews

Rent reviews should take place at regular intervals, normally between 3 and 5 years. This will be detailed in the lease. The review should determine the market rent, be independent and carried out by a surveyor; their fees may be paid from the SASS funds.

Repairs and Other Additional Work

Under the terms of most leases, minor repairs are the responsibility of the tenant. If more extensive work is required, which will increase the value of the property, the responsibility rests with the landlord ie the Trustees and the cost will be funded from either the SSAS funds or by way of a loan. A surveyor should be consulted prior to the commencement of any work.

Following the improvements, the rent may have to be increased, which requires a variation to the existing lease and a revised independent rental valuation

Where the landlord and the tenant are connected and rent is not being paid in accordance with the terms of the lease, this will be an unauthorised payment as defined in Finance Act 2004. If an unauthorised payment is made by the SSAS, HMRC will impose a tax charge on the member(s), or sponsoring employer of between 40% and 50% of the unauthorised payment. In addition, a scheme sanction charge of between 15% and 40% of the payment will be imposed on the Scheme by HMRC. The administrators of the SSAS are required to report to HMRC any unauthorised payments made.

With effect from 24th May 2004, the Control of Asbestos at Work Regulations 2002 requires that the duty holder, which is the person responsible for maintaining and repairing commercial property, is responsible for the identification and management of asbestos within the property. Under a full repairing and insuring lease, this responsibility will normally fall to the tenant. For further information, please contact your property advisers.

Scheme Borrowing

The trustees can borrow money to assist purchase. Loans must be negotiated and obtained on a commercial basis. Borrowing may be secured on scheme assets.

Whilst it is the member's responsibility to find a lender and agree terms, we have contacts with a number of lenders and can make arrangements for you to meet suitable lenders. All lenders must be made aware that they are lending to the trustees of a Registered Pension Scheme. As Moores Williams Trustees Ltd is a trustee of your scheme then we require our standard limit of liability wording to be incorporated in the mortgage documentation. Banks may also require personal liability of individual trustees.

The limit to the amount the Scheme can borrow is 50% of the net assets of the Scheme less any existing borrowing.

Example

SSAS has assets worth £200,000 but has a liability in the form of existing borrowing of £50,000.

The maximum amount which can be borrowed is £200,000 less £50,000 x 50% = £75,000. The outstanding existing borrowing is £50,000 so further borrowing is limited to £25,000.

Insurance

All property owned with in a SSAS must be insured. We need a copy of the insurance certificate each year.

There should be buildings insurance, including property owner's liability cover. The insurance should also provide for three years loss of rent, terrorism cover and, where applicable, environmental cover. The cost of insurance will be paid out of your SSAS funds but is usually recoverable from the tenant(s) of the property in accordance with the lease.

The insurance must be effective from the date of completion. It is your responsibility to ensure that insurance is in place at all times.

In addition, public liability insurance must be in place particularly when the trustees are buying land with no buildings.

There are certain minimum levels of insurance that we require be put in place.

Joint Property Purchases

It is possible for a SSAS to jointly own property with a third party including another SSAS or a SIPP.

Ownership of the property will be subject to a syndicate agreement between all of the trustees and the other joint owners. This agreement must specify that in the event of any member of the syndicate, including the trustees of the SSAS, wishing to sell part, or all, of their share in the property then the other owners will either purchase the relevant share from the SSAS at the appropriate percentage of market value, or alternatively the property will be sold. The terms of this agreement are important and legal advice must be sort prior to purchase.

The agreement must also cover the proportion of the property to be owned by the SSAS. Subject to certain HMRC restrictions, this proportion can be altered in the future, subject to the property being valued by a chartered surveyor, a revised agreement being implemented and there being a transfer of cash or other assets between the joint owners to the appropriate value. Any transfer must be carried out at market value.

VAT

Where an ‘option to tax’ is in place on a property, the Scheme will need to elect to be registered for VAT and subject to the correct procedures, the Trustees will reclaim the VAT payable on the purchase price of the property. Following the repayment of VAT by HMRC the VAT element will be credited to your SSAS funds. The reclaim can take about three months to complete and you must ensure you have sufficient funds to pay the VAT in the first place.

Subsequently VAT will be charged on the rent due on the property and on any future sale of the property. You must arrange for the completion of the VAT returns each quarter.

Your Accountant will arrange VAT registration. It is necessary to enquire about the VAT registration before the property is purchased.

The property manager or the nominated property company should raise the rental invoices, including VAT, in accordance with the lease.

Stamp Duty Land Tax (SDLT)

All commercial property transactions where the consideration paid (purchase price plus VAT) is in excess of £150,000 is subject to SDLT. The rates are as follows:

Consideration	SDLT Rate
£0 - £150,000	Zero
Over £150,000 - £250,000	1%
Over £250,000 - £500,000	3%
Over £500,000	4%

You must ensure you have sufficient funds in the SSAS available to cover the payment of the SDLT.

Fees

All fees related to purchase and ongoing administration can be paid either from the SSAS or by the Sponsoring Employer. This will include legal costs, surveyor’s fees and our fees, plus disbursements.

Ongoing fees will include surveyor’s fees, property management fees, legal fees and our fees.

You must ensure there are sufficient funds in the Scheme bank account to meet all costs, initial and ongoing, associated with the property.

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