SMALL SELF ADMINISTERED SCHEMES (SSAS)

Our guide to SSAS Loans

What is a SSAS?

A SSAS is a pension trust arrangement that is set up by a limited company and very occasionally a partnership. Typically they are used to benefit the owners of family run limited companies and their families. Membership can include senior employees of the business too.

The members of a SSAS are also the trustees. For this reason the members have full control of the SSAS assets and not least the investment options. Provided the SSAS investments comply with HMRC rules, the investment strategy of the SSAS can be aligned with the business activities of the limited company or the partnership.

Pension schemes offer attractive tax concessions and the SSAS is no different. The SSAS tax advantages are as follows:

1. Company contributions to the SSAS are classed as a trading expense provided they pass the *wholly and exclusively test* *and are thus 100% relievable against tax.
2. SSAS investments grow free of income tax and capital gains tax.
3. A tax free lump sum can be withdrawn from age 55.
4. A tax free lump sum is payable on death occurring before the member reaches age 75.

(*Employer pension contributions are deemed to be a trading expense provided that they are incurred wholly and exclusively for the purposes of the employer's trade or profession).

The investment scope for a SSAS is wide. Many SSAS's invest in commercial property and lease it to the sponsoring employer. A SSAS can also make loans to the sponsoring employer and a SSAS can borrow up to 50% of its net value to assist with these and also any other investment strategies.

There are some HMRC rules and restrictions on SSAS transactions, particularly any transaction with a member's company or a SSAS member. The penalties for falling foul of these rules are harsh, the right advice is therefore essential.

This guide on SSAS Loans is offered to you as information, personalised advice before any action is nonetheless vital.

SSAS Loans

A SSAS can lend money to the sponsoring employer (ie a SSAS member's company) and also to third parties that have no connection with the SSAS.

Loans directly to a SSAS member, or to a spouse or relative of a SSAS member are prohibited. Loans to any company (other than the sponsoring employer) that is controlled by a SSAS member, or relative of a SSAS member, are not allowed either.

Where a SSAS Loan is made to a company, it must be a trading company and the loan must be for a genuine trading reason. A SSAS loan to avert a company from becoming insolvent is not a genuine trading reason.

As mentioned, all SSAS loans must be for a genuine trading reason and for helping the borrower's trading. Once the SSAS loan is made it must be used for the reason agreed on advance of the loan.

Uses of a SSAS loan include purchasing commercial property, buying stock, buying plant and machinery, computer hardware and software and marketing.

The maximum that a SSAS can lend is 50% of the net value of the SSAS assets. The total combination of loans cannot exceed this 50% ceiling. This is calculated when the loan is made. It is not calculated again, accordingly there is no rule breach if the assets of the SSAS fall in value after the loan has been made.

If a SSAS loan amount is higher than this 50% rule the SSAS will be in breach of HMRC Rules and a hefty penalty will be charged to the SSAS.

Loan Security

SSAS loans must be on a secured loan basis. Security requirements are:

- The asset must have real value which must be independently assessed.
- The value must be at least equal to the value of the loan plus the interest payments over the term of the loan.
- There must be a first legal charge over the security asset.
- The security asset must be outside of the SSAS.
- The security does not have to be provided by the borrowing company.
- Generally a principle private residence will not be accepted as suitable security.

Assets considered to be suitable for security are:

- Commercial property
- Intellectual property (Copyright, trademarks, designs and patents).
- Certain business assets (debtors, franchise agreements)
- Buy to let property
- Land
- Plant and machinery (provided its value does not depreciate faster than the loan repayment).

A point to be aware of is that if the asset for the loan security is an asset that is not an acceptable investment for the SSAS (such as residential property, plant and machinery and *tangible moveable property* such as vehicles), two conditions must be met:

- The SSAS must not pay for any fees associated with making the loan including any legal fees for the legal charge.
- The legal charge must not contain a mortgage in possession clause. Accordingly if the borrower defaults on the loan and the security is called in, the SSA S can only enforce the sale of the asset. Otherwise, if the secured asset would become an asset of the SSAS.

This would immediately create a tax charge for the SSAS (because the asset is not a permitted investment for the SSAS).

The legal charge is registered appropriately as follows:

- Company assets used as security are registered at Companies House.
- Property used as security is registered with the Land Regisrty.
- Intellectual property used as security is registered with the Intellectual Property Office (not copyright).

Interest rates

The minimum rate of interest on a SSAS Loan must be at least 1% above the average of the six leading high street bank base rates. This ensures a commercial rate of interest is charged for the loan. The average is rounded up by 0.25%.

A higher rate of interest is possible but only if the higher loan terms are equal to another commercial source of borrowing and can be evidenced.

Once the interest rate is agreed it is fixed for the duration of the loan unless the loan terms provided the loan conditions are altered.

Loan term:

The term of loan must not exceed five years from the date the loan is advanced.

If the borrower has difficulties repaying the loan and it is not fully repaid at the end of the five year term, the loan term can be extended for a further five years starting from the original repayment date. This is a roll-over of the original loan, it is not treated as a new loan.

In these circumstances the existing security may continue, the maximum loan value of 50% of the net value of the SSAS is not re-tested provided there is no increase to the original loan.

A roll-over facility is to allow for when a borrowing company has difficulties maintaining loan repayments.

In these circumstances a penalty charge will be applied to the SSAS in the form of an unauthorised payment charge.

Repayment terms:

All loans must be repaid in equal instalments of capital and interest for each complete year of the loan, whether monthly, quarterly, half-yearly or annually.

If loan repayments are not maintained in accordance with the agreed repayment schedule and where capital and interest repayments are not made in equal instalments a penalty in the form of an unauthorised payment charge will be applied to the SSAS.

Unauthorised Payment Charge:

If a borrower fails to meet the agreed repayment loan terms an unauthorised payment tax charge will apply. This is a percentage of the unauthorised payment and is as follows:

40% tax charge payable by the borrower plus 15% tax charge payable by the SSAS (increasing to 30% if the outstanding loan exceeds 25% of the fund value).

If these charges cannot be paid by the borrower and/or the SSAS HMRC will pursue the member trustees for payment.

Loans to unconnected parties:

A SSAS loan to an unconnected party is allowable provided it is deemed to be *prudent, secure and on a commercial basis.* HMRC do not provide specific terms for such loans, therefore the parties can negotiate loan terms.

There is no specific limit on the amount of the SSAS fund that can be loaned to an unconnected party and there is no HMRC requirement for the loaned to be secured (although it may not be considered to be *prudent* if the loan is unsecured).

It must be a genuine unconnected party. The scheme trustee will need to establish this with certainty. HMRC definition of *Connected Party* is given in Section 993 and 994 of the Income Tax Act 2007.

Loans to purchase *Taxable Property*:

Loans to unconnected parties for the purpose of purchasing *Taxable Property* such as residential property, vehicles, yachts, jewellery etc. are not permitted.

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