

# Guidance for a non-standard investment by a Dentons SIPP or SSAS in

- Shares in, or a loan to, an unquoted UK limited company
- Shares or units in a collective investment scheme

**Please note:** terms in bold italic are defined at the end of the form.

Under HM Revenue and Customs (HMRC) pension tax rules, investment by a SIPP or SSAS in **'taxable property'** (i.e. residential property and/or tangible moveable property) whether directly by the SIPP or SSAS or **indirectly** by acquiring shares in, or making a loan to, a vehicle (which includes individuals, companies, partnerships, trusts and collective investment schemes) is an 'unauthorised member payment'.

## Unauthorised payments

Under HMRC rules, a loan to a connected person (other than a loan by a SSAS to a sponsoring employer) is automatically an unauthorised member payment.

**Special rules have to be satisfied for a loan by a SSAS to a sponsoring employer to be an authorised payment and this is covered in a separate set of guidance notes.**

An unauthorised member payment can give rise to severe tax charges on the SIPP or SSAS member and on the SIPP or SSAS itself via the scheme administrator. In some cases the total tax charge could be as high as 70% of the amount of the unauthorised member payment.

## Exemption from the taxable property rules

A vehicle can however be exempt from the **taxable property** rules if it qualifies as a 'Genuinely Diverse Commercial Vehicle (GDCV)' and the conditions to qualify depend on whether the vehicle is trading or non-trading. A vehicle is trading if its main activity is the carrying on of a trade, profession or vocation and is taxed as such by HMRC.

As a result of these complicated HMRC rules, a Dentons' SIPP or SSAS can only:

- acquire shares in, or make a loan to, an unquoted UK limited trading company (which for these purposes includes Alternative Investment Market (AIM) listed UK companies) provided it is a GDCV at all times that the SIPP or SSAS holds the investment;
- make a loan to an unquoted UK limited non-trading company provided it is a GDCV or that it is not controlled directly or indirectly by a SIPP or SSAS member or a connected person and will not hold, directly or indirectly, any **taxable property** at any time while the loan is outstanding; and
- acquire shares or units in an unquoted UK limited non-trading company or collective investment scheme provided it is either a GDCV or it will not hold, **directly or indirectly**, any **taxable property** at any time while the SIPP or SSAS holds the investment and HMRC borrowing limits will not be exceeded.

## Proposed investment requirements

Details of how to establish whether a proposed investment satisfies our requirements are set out below:

**Part A** - Unquoted UK limited trading companies

**Part B** - Unquoted UK limited non-trading companies and collective investment schemes

## Other points to note:

- Shares in, or unsecured loans to, unconnected unquoted UK limited trading companies:
  - are only permitted where the company is financially sound with a minimum of three years' positive trading accounts
  - are each restricted to 25% of the net market value of the SIPP or SSAS at the point of advance/purchase
  - in aggregate, cannot exceed 75% of the net market value of the SIPP or SSAS fund at the point of advance/purchase, and the remaining 25% must be held in readily realisable investments. If the investments are in the same company, the maximum is restricted to 50%
  - the normal maximum term for an unsecured loan is two years, but unsecured loans of up to three years may be considered. All loans are reviewed on a case by case basis
  - unsecured loans will require cashflow modelling to show repayment terms for the loan and if the company directors will provide guarantees against the value of the loan.
- For secured loans to unconnected UK limited trading companies to 95% of the net market value of the SIPP or SSAS fund can be used provided it is secured by a first charge on property (with a loan up to the value of 70%) and there will be a balance of at least £5,000 in the SIPP or SSAS default bank account after the loan has been made.
- Security for a loan must be in the form of property.
- Loans cannot be made to collective investment schemes, trusts, partnerships or individuals.
- It is most unlikely that a sponsoring employer of a SSAS will be a GDCV but if it is, the amount of the SSAS fund used to acquire shares in a sponsoring employer must be less than 5%. If there are four or more sponsoring employers in a SSAS, the total amount of the SSAS fund that can be used to acquire shares in them must be less than 20%.
- Where the investment vehicle is a collective investment scheme that is not regulated or recognised by the Financial Conduct Authority (FCA) or regulated by the European Union, it is an Unregulated Collective Investment Scheme or UCIS and the SIPP or SSAS member will also need to complete our *Non Standard Investment Declaration* to confirm they are either a sophisticated investor or a high net worth individual.
- Structured products are fixed term investments and are generally complex and it's important that the product is fully understood before deciding to invest. They must have a fixed term of less than 5 years to be held in a Dentons SIPP or SSAS. Please complete our *Structured products* investment questionnaire. For unregulated structured products we will also require completion of either our *High Net Worth* or our *Elective Professional Client* form.
- Property syndicates are treated as proportional ownership of a commercial property and up to 95% of the net market value of the SIPP or SSAS can be used. Please complete our *Property syndicate* investment questionnaire.
- Investment in Limited Liability Partnerships or overseas unquoted companies is not permitted.

## PART A – unquoted UK limited trading companies

### ESTABLISHING WHETHER A SIPP OR SSAS CAN ACQUIRE SHARES IN, OR MAKE A LOAN TO, AN UNQUOTED UK LIMITED TRADING COMPANY

#### STEP 1: Establishing if the UK limited trading company is a GDCV

- > Is the company **controlled**, directly or indirectly, by the SIPP or SSAS member (i.e. is it controlled by the member and/or any **associated person**)? Yes  No
- > Is the SIPP or SSAS member or a **connected person**, a **controlling director** of the company? Yes  No
- > Is the proposed purchase of the shares to enable the SIPP or SSAS member, or a **connected person**, to occupy or use **taxable property** held by the company? Yes  No

If the answer to **any** of the above is **Yes**, the company is not a GDCV. The SIPP or SSAS cannot acquire shares in or make a loan to the company.

If the answer to **all three** of the above is **No**, the company is a GDCV. **A secured loan can be made at this stage.** Please complete the relevant sections of the Investment Questionnaire.

#### STEP 2: Where the proposed investment is shares or an unsecured loan

- > Does the company have trading accounts for at least three years and is it currently trading profitably? Yes  No

If the answer is **No**, the SIPP or SSAS cannot acquire shares or make an unsecured loan.

**If Yes, an unsecured loan can be made at this stage.** Please complete the relevant sections of the Investment Questionnaire.

#### STEP 3: Additional requirements for where the proposed investment is in unquoted shares

- > Is the SIPP or SSAS acquiring the shares from a **connected person**? Yes  No

If **No**, the SIPP or SSAS can acquire the shares at the agreed price.

##### If **Yes**:

For **AIM listed shares**, the SIPP or SSAS must acquire the shares at the market price.

For **unquoted shares**, the market price of the shares will need to be established by an independent professional (e.g. the company's auditor) and the SIPP or SSAS can then acquire the shares at that price. Please complete the relevant sections of the Investment Questionnaire.

#### Please note:

**We will need copies of these accounts to check that the company is trading profitably.**

## PART B – non-trading limited companies and Collective Investment Schemes

### ESTABLISHING WHETHER AN INVESTMENT CAN BE MADE IN AN UNQUOTED UK LIMITED NON-TRADING COMPANY OR A COLLECTIVE INVESTMENT SCHEME (CIS)

**STEP 1: A UK Real Estate Investment Trust (REIT)** will be a GDCV provided:

- > The SIPP or SSAS does not hold directly or *indirectly* an interest in the UK REIT for the purposes of enabling a SIPP or SSAS member to occupy or use property held by the UK REIT.
- > Any rights and/or entitlements in the company or collective investment scheme that come with the investment by the SIPP or SSAS, when aggregated with any similar rights and/or entitlements of any **associated persons**, must be less than the following limits:
  - 10% of the share capital or issued share capital
  - 10% of the voting rights
  - 10% of the income
  - 10% of the amounts distributed on a distribution
  - 10% of the assets on a winding up or in any other circumstances.

In addition, the SIPP or SSAS must not have a right or entitlement to income and gains from a specific property.

**STEP 2: A company or collective investment scheme (other than a UK REIT)** will only be a GDCV provided it satisfies all of the following at any time while the SIPP or SSAS holds shares or units in it:

- > Either:
  - (a) the total value of the assets held directly by the company or collective investment scheme is at least £1 million, or
  - (b) it holds at least three residential properties,
 and in either case, no single directly held item of taxable property has a value of more than 40% of the total value of directly held assets.
- > If it is a company and resident in the UK and is not a **close company**.
- > It does not have as its main purpose, or one of its main purposes, the direct holding of animals used for sporting purposes.
- > The SIPP/SSAS's interest in it is not to enable the SIPP/SSAS member or a **connected person** to occupy or use taxable property it holds directly or *indirectly*.
- > Any rights and/or entitlements in the company or collective investment scheme that come with the investment by the SIPP or SSAS, when aggregated with any similar rights and/or entitlements of any **associated persons**, must be less than the following limits:
  - 10% of the share capital or issued share capital
  - 10% of the voting rights
  - 10% of the income
  - 10% of the amounts distributed on a distribution
  - 10% of the assets on a winding up or in any other circumstances.
 In addition, the SIPP or SSAS must not have a right or entitlement to income and gains from a specific property.

**STEP 3: A company or any collective investment scheme that is not a GDVC** may still satisfy our requirements provided it is not controlled, directly or *indirectly*, by a SIPP or SSAS member or connected person and will not hold, directly or *indirectly*, any interest in **taxable property** at any time while the SIPP or SSAS holds the investment and HMRC borrowing limits will not be exceeded.

**LOAN TO AN UNQUOTED UK LIMITED NON-TRADING COMPANY**

Is the UK limited non-trading company a GDCV?

Yes

No

If Yes, **the investment can be made.**

If No, will the company be controlled, directly or indirectly, by a SIPP or SSAS member or a connected person at any time while the SIPP or SSAS holds the investment?

Yes

No

If Yes, **the investment cannot be made.**

If No, will the company hold, directly or indirectly, any interest in taxable property at any time while the SIPP or SSAS holds the investment?

Yes

No

If Yes, **the investment cannot be made.**

If No, will the SIPP or SSAS's deemed 'share' of any borrowing by the company, when aggregated with any other borrowing by the SIPP or SSAS, exceed 50% of the net market value of the SIPP or SSAS?

Yes

No

If No, **the investment can be made.**

If Yes, **the investment cannot be made.**

**SHARES/UNITS IN AN UNQUOTED UK LIMITED NON-TRADING COMPANY/ COLLECTIVE INVESTMENT SCHEME**

Is the UK limited non-trading company or collective investment scheme a GDCV?

Yes

No

If Yes, **the investment can be made.**

If No, will the investment vehicle hold, directly or **indirectly**, any **taxable property**?

Yes

No

If Yes, **the investment cannot be made.**

If No, will the SIPP or SSAS's deemed 'share' of any borrowing by the investment vehicle, when aggregated with any other borrowing by the SIPP or SSAS, exceed 50% of the net market value of the SIPP or SSAS?

Yes

No

If No, **the investment can be made.** If Yes, **the investment cannot be made.**

**Please note:**

If the investment is an unregulated collective investment scheme (UCIS), the SIPP/SSAS member must also be able to complete and return our *Non Standard Investment Declaration* to confirm they are either a sophisticated investor or a high net worth individual.

## Definitions

**Associated person** includes a SIPP or SSAS member, any connected person, any pension scheme relating to the member or a connected person and any associated pension scheme.

**Close company** broadly means a company:

- (a) which is under the control of five or fewer participators or any number of participators if those participators are all 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** in relation to a SIPP or SSAS member includes their spouse or civil partner, their relatives (including children, brother, sister, parent, grandparent, grandchild), the relatives of the member's spouse or civil partner, the spouse or civil partner of a relative of the member, the spouse or civil partner of a relative of the member's spouse or civil partner, partners in a partnership business in which the member or a connected person is a partner, companies controlled by the member and/or associated person(s) and trustees of certain settlements.

**Control** – a person has control of a company if they exercise, are able to exercise, or are entitled to acquire, direct or indirect control over the company's affairs.

**Controlling director** – includes any person who is:

- occupying the position of director by whatever name called and any person in accordance with those directions or instructions the directors are accustomed to act, or is a manager of the company or otherwise concerned in the management of the company's trade or business, and
- is either on his or her own or with one or more associated persons 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 associated persons' means that a person is treated as owning, or as the case may be, controlling, what any associated person owns or controls, even if he or she does not own or control share capital of his or her own.

**Indirectly** means through another vehicle (including – but not exclusively – individuals, partnerships, companies, trusts and collective investment schemes).

**Taxable property** means residential property and/or tangible moveable property (e.g. plant and machinery; motor vehicles; fixtures, fittings and furnishings that are not part of the fabric of a building; and office equipment). However any item that is worth no more than £6,000 and is held solely for the purposes of the administration or management of the company/vehicle and is not available for the personal use of a SIPP or SSAS member or a connected person is exempt.

The direct/indirect holding of taxable property by a SIPP or SSAS is an unauthorised payment and may give rise to tax penalties on the SIPP or SSAS member(s) and the scheme administrator.

If security for a loan includes residential property and the legal charge is not drawn up correctly and the SIPP or SSAS ends up holding the property or an interest in it then there could be tax charges.

**Trading company** (for Corporation Tax purposes) is, broadly, a company that is engaged in any business activity (i.e. carrying on a trade or profession, or buying and selling goods and services with a view to making a profit or surplus) and that only a small part, if any, of its profits or surplus relate to non-trading activities.



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