

GUIDANCE NOTE

LOANS FROM A SIPP OR A SSAS

APPROVED FOR INVESTOR USE | 2018

General

Both SSASs and SIPPs can make loans to unconnected third parties, and in addition SSASs can make loans to a connected employer company. Loans must not be made, either directly or indirectly, to scheme members or their relatives or other “connected parties” as defined below.

All loans must be genuine investments and should be prudent, secure and commercial. There are substantial tax charges if the rules on loans are broken.

Connected parties

Loans must not be made, directly or indirectly, to connected parties (other than a SSAS making a loan to the employer company). An indirect loan would be, for example, the scheme making a loan which is apparently acceptable to an unconnected party, and then the money finds its way to a connected party.

A “connected party” can broadly be defined as:

- a spouse or relative;
- a spouse of a relative;
- a trustee who is connected with a settlor;
- a fellow partner in a partnership, or a spouse or relative of a partner; or
- a company which is controlled by connected parties, one company controlling another, or 2 companies controlled by the same person.

Loans to connected employers

An employer is connected if the scheme member and connected parties have control over it. Loans to a connected employer can only be made from a SSAS and the employer company must participate

in the SSAS. The key requirements for the loan are:

- the amount must not exceed 50% of the net assets of the scheme at the time that the loan is made; and
- the term of the loan must not exceed 5 years; and
- the rate of interest on the loan must be a minimum of 1% above the average base lending rate of 6 clearing banks:
 - Bank of Scotland
 - Barclays
 - HSBC
 - Lloyds TSB
 - National Westminster
 - Royal Bank of Scotland

rounded up to the nearest 0.25%; and

- the loan must be repaid by equal instalments of capital and interest throughout the term; and
- the loan must be secured by a first charge on an asset of the company or another party, which will secure the loan throughout its term. In practice this is likely to be a property. A written valuation of the asset will be required and then a formal legal charge will be put in place.

If the loan cannot be fully repaid at the end of the term, then it may be rolled over for a further period of 5 years, but no subsequent rollovers are allowed.

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As well as these key requirements, the loan must be a genuine investment for the company's trading purposes. In practice this means that:

- the company must be capable of meeting the repayments on the loan. Curtis Banks Ltd will require a letter from the company's accountants confirming the financial position of the company and its ability to make loan repayments; and
the loan must be for a genuine trading purpose. It must not be used to circumvent HMRC restrictions on permitted investments, e.g. used by the company to buy residential property to be occupied by a scheme member; and
the company must give equal priority to the loan repayments as to its other creditors. If the company falls behind with repayments, the scheme must use all the powers available to a commercial lender including statutory demands, enforcing the security and appointing receivers.

Loans to third parties

These can be made from either a SSAS or a SIPP. The borrower must be a genuine unconnected third party and the loan must not be a way of circumventing restrictions on assets which the scheme might have wanted to purchase, e.g. buying a holiday home. The HMRC rules on this are strict and do not allow loans to individuals to be used to acquire any type of "taxable property" - this can include any items purchased with the loan. As a result, we do not allow third party loans to individuals.

The requirements for the loan are:

- it should be prudent - the borrower should be capable of repaying it by regular instalments of capital and interest; and
- it should be secure - this could be either a first or second charge over assets giving adequate security and a legal charge needs to be put in place. As a result, we do not allow unsecured loans; and
- it should be commercial - the interest rate and the term of the loan should be at normal commercial levels.

The key test is whether a third party lender, e.g. a bank, would be likely to make the loan, and what the terms would be. It is helpful if a letter can be obtained from a outside lender confirming the terms on which they would be prepared to lend to the third party.

Tax charges

If HMRC rules on loans are broken, then the amount which is in breach of the rules is taxed:

- a 40% tax charge is payable by the borrower; and
a 15% tax charge is payable by the scheme.
This increases to 30% if the loan is more than 25% of the scheme assets.

Our fees

Please refer to our Schedule of Fees for your SIPP or SSAS. In addition there may be fees to other advisers for valuing assets and advising on the commerciality of the loan.

Because of the complex nature of loans, full details of proposed loans must be referred to us before the loan goes ahead, and we cannot guarantee that a loan will be acceptable as a scheme investment.

Details of a proposed loan should be submitted to us on our loan questionnaire which is available online or request.

Contact Details

If you'd like to speak to us about anything on this fact sheet, please contact us on:

T 0117 910 7910

We may record and monitor calls. Call charges will vary.

E enquiries@curtisbanks.co.uk

Please remember not to send any personal, financial or banking information via email as it is not a secure method of communication.