

NEWSLETTER - INVESTMENTS FOR SSAS CLARITY ON HMRC REQUIREMENTS FOR LOANS TO EMPLOYERS

You will be aware that the Trustees of a SSAS are permitted to offer the Employer a loan on certain terms.

On 6 April 2006 the terms that could be offered were changed under legislation and became more restrictive with charges implemented for non-payment.

This has led to some confusion regarding the requirements and we therefore detail below a brief outline of the requirements for loans, which commenced on or after 6 April 2006.

There are five specific elements that potentially could lead to a charge against the Employer/Trustees of the Scheme if there is failure to comply:

- a) Security
- b) Interest rates
- c) Term of the loan
- d) Amount of the loan
- e) Repayment

I will deal with each of these key areas separately and an example (produced by HMRC) is attached at the end of the Newsletter.

Security

The bottom line is that the security offered at the outset must have a value that equates to at least the capital loan facility offered plus the estimated potential interest over the course of the term of the loan.

In addition the security must be a first charge although HMRC specifies that a first charge includes security where no other charge takes priority over the charge made by the scheme.

Taxable property may be used as security but this can lead to issues if the security is "called in". This is due to the fact that this would be deemed taxable property, held in the hands of the Trustees of the Scheme, which is not permitted under the Rules. Taxable property includes items such as residential property.

If at any time there is a change in the offer of security (which is permitted) the replacement security must at least hold value of the outstanding capital plus future interests.

If at any time the loan ceases to be secured then a tax charge will be raised on the value of the loan that is unsecured.

Interest Rate

The minimum rate that may be offered on a loan facility to the Company is 1% above base rate. However, the Trustees are required to be commercial and it would be unlikely that any commercial banking facility would offer a loan on these terms.

Therefore, the Trustees do need to consider the commerciality of the interest rate that they are offering on the loan to the employer.

Fixed interest loans are permitted under the Rules of the scheme but there must always be the condition that the interest rate will be charged at the higher of the fixed rate or 1% above base. This ensures the Trustees do not fall foul of the minimum interest requirements.

Term of Loan

The loan should not exceed a period of five years and potentially a tax charge will arise calculated on a daily rate for late repayment of the loan.

Amount of the Loan

The loan is restricted to 50% of the net valuation of the scheme assets at the time the loan is taken out. Any loan facility offered at a higher amount will be chargeable to a tax charge, as this will be deemed "unauthorised".

The valuation of the fund is made at the date the loan is offered but is not required to be revalued at a later date. The HMRC does take on board the fact that a loan facility may be offered to the Employer and that subsequently an individual member may wish to receive tax-free cash lump sum, which will immediately reduce the value of the fund assets. Therefore, the assessment of maximum loan is made only at the date of the loan is offered.

Repayment Terms

Loans must be paid in equal capital instalments (for example a loan of £50,000 over five years is required to be repaid at £10,000 per annum).

The potential loan interest over the five-year term should also be assessed at the commencement of the loan facility and again must be paid at least in annual equal instalments. For example if the loan for £50,000 will accrue interest over the five year term of £10,000 then the interest repayment must be made at a minimum of £2,000 per annum.

However, in many loan documents, interest is payable on an annual ongoing and accumulative basis and so a higher level of interest will be payable in the earlier years with a lower level of interest payable at the tail end. This is permitted by HMRC as long as the Trustees are receiving the minimum interest payment in accordance with the legislation.

Any interest payment that falls below the minimum amount in a particular year is potentially subject to tax charges.

HMRC requires that at the end of the term of the loan the five key issues outlined above are reviewed. The Trustees need to consider the security, interest rate offered, the term of the loan, the maximum amount and the repayment of the loan and calculations must be made to establish any unauthorised payment in each of these five areas.

For example if a company fails to meet the capital and interest payment in a particular year and extends the term of the loan for 90 days, two unauthorised payment calculations will be required. The first calculation will be in direct relation to the

repayment terms and a second will be in direct relation to the term of the loan. The Trustees then assess the tax charge on each of the key areas where the employer has failed to comply with HMRC requirements but only the highest charge will apply. Therefore, if the repayment tax charge is £1,000 but the repayment term tax charge is £2,000 then the employer will be required to meet the charge of £2,000.

The tax charge against the employer is raised directly by HMRC and must be reported to HMRC by the Trustees of the Scheme in order to maintain the registered scheme status.

Over and above this there is a charge on the Scheme known as a **Scheme Sanction Charge**. The charge on the scheme is either:

- a) A tax charge equivalent to that charged to the employer or
- b) If the employer meets the tax charge in full then the amount charged to the Scheme is reduced.

Examples

I am attaching the examples supplied by HMRC which provide clarity on the HMRC requirements for assessing charges for each of these five areas.

It is clear that in the current times of commercial and financial difficulty for firms, the capital and interest repayments are not always made on time and in some instances the loan is unable to be repaid within the five-year term. Although the HMRC offers some leniency in the extension of the term of the loan there is no offer of leniency for failure to make repayments of capital or interest.

Loans originally provided on or before the 5th April 2006 do fall under a slightly different regime and will be reviewed by HMRC on a different basis.

It is essential that all Trustees are aware of the implications of loan facilities which are offered to employers to ensure that the five key requirements are met at all times to avoid any potential tax charges. Therefore if further information regarding the specifics of the information outlined above is required please contact our office.

Gill Baynes

Director

Disclaimer

The information given within this newsletter is based upon our understanding of legislation. It does not constitute legal or financial advice. This is information and not advice and therefore, we cannot accept responsibility for any disadvantage arising from action taken as a consequence of this newsletter.*

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