



The Xafinity Self Invested Personal Pension (SIPP)

Unlisted Company Shares Guide



If you require this document in another format for ease of reading, please let us know.

This document has been written for The Xafinity SIPP. However, if you have a Xafinity Self Invested Personal Pension Plan it is still correct in its technical content but there are some minor differences.

You can find out what SIPP you hold by looking at your Policy Number. The table below explains the differences to consider when reading this document.

Policy Number	SIPP Name	Differences in this guide
1nnnnn (6 digits starting '1')	The Xafinity SIPP, and SimplySIPP	None
5nnnn (5 digits starting '5')	Xafinity Self Invested Personal Pension Plan	<ul style="list-style-type: none"> • The SIPP is not Defaqto rated; and • The SIPP Provider is Bank of Scotland

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Important Note

This document is updated regularly. Please ensure you are referring to the latest document, by downloading it from Xafinity.com.

Unlisted share investment is not available with the SimplySIPP. If you have a SimplySIPP and wish to invest in unlisted shares, please contact us about moving to the full Xafinity SIPP.

1. Unlisted Company Shares – An Introduction

Background

Unlisted UK company shares can be purchased by, and held under, the Xafinity SIPP. However, there are a number of points that need to be fully considered before doing so. Unlisted company shares in non UK companies can't be held by the Xafinity SIPP.

There are detailed regulations and potentially severe tax consequences applying to this area of investment. These are explained at a high level in this guide. With this in mind, **the SIPP member must fully discuss** any proposed purchase of unlisted company shares with their advisers before commencing any work, as it could lead to fees being applied, even if the purchase does not proceed.

The purpose of this guide is to provide you with an overview of the main points and to detail our requirements.

HMRC Regulations

The main concern when purchasing unlisted company shares is that, in doing so, the SIPP could fall foul of Her Majesty's Revenue & Customs' (HMRC's) Taxable Property Regulations. This would lead to unauthorised payment tax charges, which can be severe.

These regulations are designed to prevent two things: -

- That a SIPP member does not invest in anything that they either directly (or indirectly through their association with another party) control.
- That a SIPP member does not invest in anything that allows that member personal use and/or benefit.

As examples, the following would fall foul of these regulations: -

- The SIPP buys 10% of the shareholding in an unlisted company in which the SIPP member's wife already owns 15% of the shareholding. Indirectly, the SIPP member is classed as holding 25% of the shareholding and this would be classed as a "controlling interest" as it is greater than 20%.
- The SIPP buys unlisted company shares in a company that owns a delivery van. Through the ownership of these shares the SIPP member is granted personal use of this van.

To ensure that no tax charges apply when purchasing unlisted company shares, there are two main exemptions in the HMRC Regulations that must be fully considered. We refer to these as Exemption A and Exemption B. A transaction is permissible, provided it meets either exemption explained below.

The Role of the Accountant

The Accountant will play a vitally important role in relation to any proposed unlisted company shares purchase. They will be needed to provide the required disclosure statement and also provide initial and ongoing valuations. We are happy to work closely with the Accountant to help streamline the overall process as much as possible.

Where the purchase is of unlisted company shares in an established Company, the Company Accountant will normally provide the required disclosure statement and valuations. Where the purchase is in a new start-up Company the Accountant is usually from an independent firm.

In addition your Accountant must confirm if this transaction needs s707 advance clearance.

Xafinity's Role

Our key roles are to ensure that any transaction is acceptable and does not fall foul of HMRC Regulations. In addition, we are here to help co-ordinate the transfer of ownership and assist all parties through the various stages.

Maximum Investment in Unlisted Company Shares

Using your Xafinity SIPP you can invest up to 70% of your fund into Company Shares. We have imposed this limit to reduce the risk of any unlisted shares investments falling foul of tax avoidance legislation and to help protect against the tax consequences of pension scheme liberation legislation. Details of both of these follow. It is also possible for a SIPP to own more than 20% of the issued share capital of a company. This could only be achieved if the SIPP investment satisfied the requirements of Exemption B.

Please note that the 70% limit includes any lending from the SIPP. For example, if you have used 50% of your SIPP to lend to an unconnected party, we would only allow 20% to be invested in unlisted shares.

Advanced Clearance Under Income and Corporation Taxes Act (ICTA) 1988, Part 17, Chapter 1

The above legislation is aimed at preventing anyone from gaining tax advantage from any transaction, unless they can demonstrate that transaction is a bona fide commercial transaction or part of the ordinary business of making or managing investments and that gaining a tax advantage is not one of the reasons. If this cannot be confirmed the transaction may be subject to corrective action, e.g. tax assessment.

In order to comply with the above any unlisted share purchase may need to receive S707 clearance in advance of the transaction completing. Your financial / tax adviser will be able to provide further details on this issue.

Pension Scheme Liberation

As pension scheme Trustees we have a duty to ensure that any investments entered into by our SIPP members are not being made with a view to using the investment as a vehicle for pension scheme liberation, also known as "trust busting". All members wishing to invest in unlisted shares will need to sign a declaration confirming that this is a legitimate investment and that the investment is not being used as a "trust busting" exercise.

If HMRC deem an investment to be "trust busting" there are significant tax charges on both the pension scheme and the recipient (usually the scheme member).

Stamp Duty

You should seek professional advice on whether Stamp Duty is applicable in any unlisted shares purchase. Generally, Stamp Duty is payable on any shares transaction exceeding £1,000 and the applicable rate at the moment is 0.5%. Please contact your adviser for further guidance on this issue.

Shareholders' Agreements & Legal Advice

Following the purchase of unlisted company shares, the shares are held in the name of Xafinity Pension Trustees Ltd (XPTL), as sole Trustee of the Xafinity SIPP. Although the company shares are in our name, XPTL will not exercise any voting rights in relation to the shareholding and these rights will be passed onto the underlying SIPP member. Also, XPTL's potential liability in terms of any agreement in respect of the unlisted company shares will be limited to the value of the individual SIPP. These points, and others depending on the investment, will normally be formally documented by the Company in a Shareholder's Agreement.

Where there is documentation that Xafinity will need to sign in tandem with an unlisted share purchase, this must be presented to Xafinity well in advance of the proposed purchase. In addition, legal advice will be needed by XPTL prior to acceptance and signature. Xafinity itself cannot offer this legal service, so the member will need to consider and choose the Solicitor that will represent XPTL to ensure all requirements are met. The costs for this legal advice will be payable from the SIPP's funds.

Where the purchase meets the exemptions (these are explained below in section 3) the Company Accountant of the Company in which unlisted company shares are to be purchased (or an independent Accountant) must fully review the Company assets. Then the Accountant would need to confirm, in writing, that the Taxable Property Regulations are not currently being breached and that they will not be breached in the following year. Further, to ensure that there are no future breaches of these Taxable Property Regulations, we will require an Accountant to make annual reconfirmation.

Our Fees

Xafinity will apply charges for the work it carries out in relation to any purchase of unlisted company shares and/or additional work linked with the transfer of ownership of the company shares. Details of these charges are available on request from Xafinity and are provided when the SIPP is set up. These fees are in addition to any legal, accountant or valuation fees.

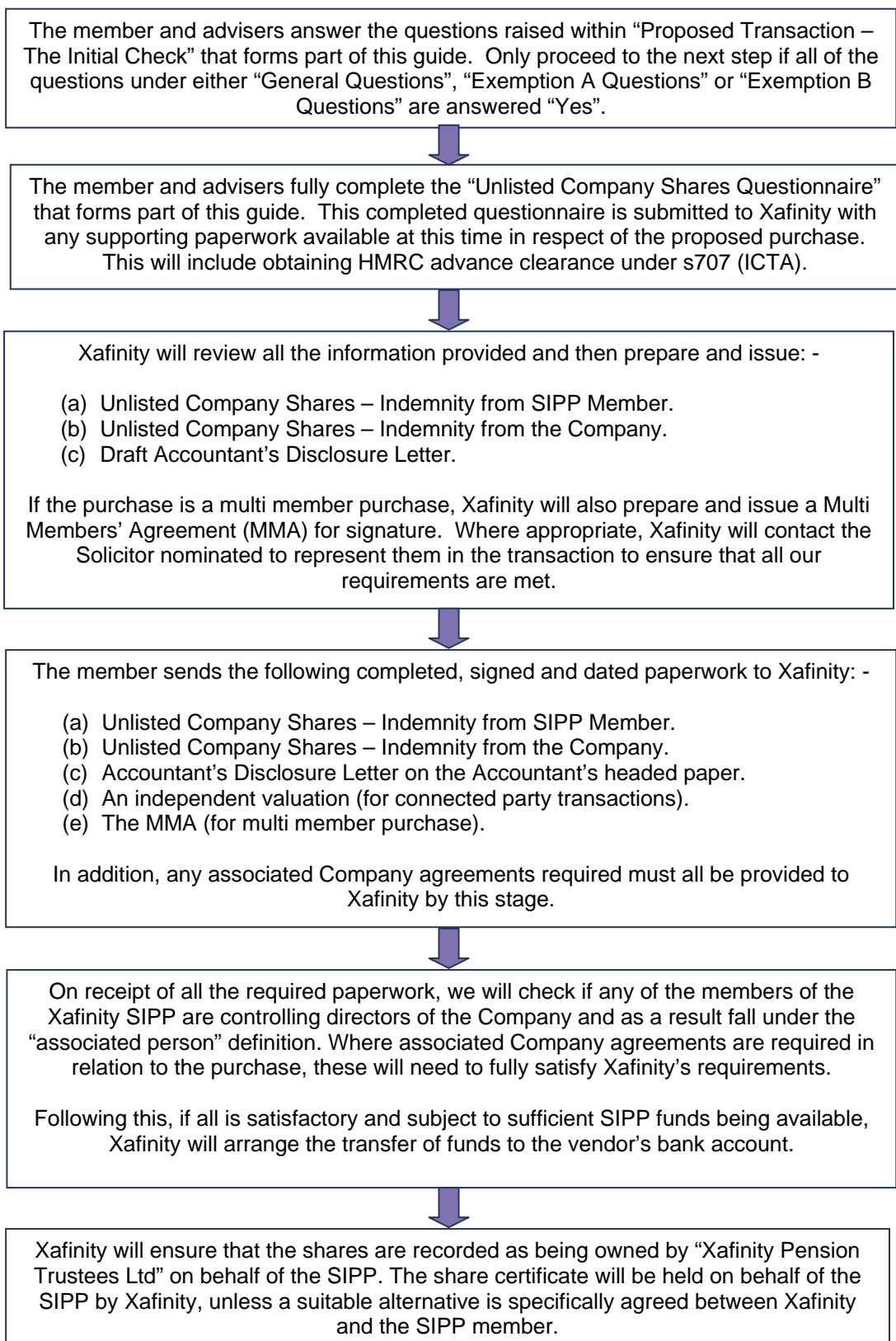
Xafinity cannot be held responsible for any fees that arise with any proposed or actual transaction.

Timescales

The time needed for the transfer of the ownership of the unlisted company shares will vary depending on the number of parties involved in the transaction, with their co-operation being vital to ensuring the transaction is completed quickly.

As an example, on our approval of the proposed purchase of unlisted company shares, it will generally take around four to five weeks to complete this.

2. Unlisted Company Shares – Summary



3. Proposed Transaction – The Initial Check

Before proceeding any further with the proposed investment, the following questions in respect of either exemption must all be answered “Yes” in respect of any SIPP member.

General Questions

1. Has the company been trading for at least 12 months?
2. Have accounts covering a period of at least 12 months been submitted to Companies House?
3. Have you taken advice from an authorised financial adviser on this investment?

! ***STOP! Have you answered all of the above questions “Yes”? If not, the investment can’t proceed.***

Exemption A – Proposed SIPP shareholding is less than 20% - Requirements

This aspect of the Taxable Property Regulations falls under the title of “Indirect holdings not subject to tax charges: Trading concerns” - see <http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM07109450.htm>. All four conditions noted below must be met in order to qualify for this exemption: -

1. The company's main activity must be the carrying on of a trade, profession or vocation.
2. The pension scheme either alone, or together with any associated persons, must not have control of the company.
3. Neither the pension scheme member nor a person connected to such a member can be a controlling director of the company, or any other company which holds an interest in the company, directly or indirectly.
4. The pension scheme must not, directly or indirectly, hold an interest in the company for the purposes of enabling a pension scheme member, or a connected person of such a member, to occupy or use an asset of the company.

This enables pension schemes to invest commercially in trading concerns without worrying about “tangible moveable property” (covered within Exemption B) being used by the company for its trade. However, points 2 and 3 above must be kept in mind. If the SIPP purchase results in greater than 20% shareholding (whether directly or indirectly) then this exemption can't be met.

In practice this means that the most that the SIPP can hold on its own and/or in conjunction with the SIPP member (and any connected individual or party) is 19.99%.

Exemption A Questions

1. Is the Company, in which the unlisted shares are to be purchased, a trading UK Company?
2. On purchasing the proposed number of unlisted shares will the SIPP own less than 20% of the Company's shares?
3. On purchasing the proposed number of shares will the SIPP, together with any associated person, own less than 20% of the Company's shares? Please see Section 4 for “associated person” definition.
4. Can you confirm that neither the SIPP member, nor a connected party of the SIPP member, are controlling directors of the Company in which the unlisted shares are to be purchased? Please see Section 4 for “connected party” definition.

5. Can you confirm that neither the SIPP member, nor a connected party of the SIPP member, are controlling directors of any Company that holds an interest in the Company that the unlisted shares are to be purchased in? Please see Section 4 for “connected party” definition.
6. Can you confirm that the SIPP is not purchasing unlisted shares in the Company for the purposes of enabling the SIPP member, or a connected party of the SIPP member, to occupy or use an asset of the company? Please see Section 4 for “connected party” definition.

STOP! *Have you answered all of the above questions “Yes”? If so, there is no need to answer the “Exemption B Questions” below as the proposed transaction is acceptable, in principle. If you have answered “No” to any of the above questions, then please answer the “Exemption B Questions” below.*

Exemption B - Proposed SIPP (& Personal) shareholding is greater than 20% - Requirements

Exemption B requires a more detailed investigation of the company in which shares are to be held. Our current understanding of the way in which HMRC will implement the Regulations under Exemption B is that it is **unlikely to be workable in practice for almost all trading companies**. This follows discussions between the Association of Member-Directed Pension Schemes (AMPS) and HMRC. We continue to review industry guidance in this area and the information below represents our current understanding.

Exemption B works as follows:

- The assets of the company must be examined in detail to assess whether any of these assets are classed as “tangible moveable property”.
- If an asset meets the definition of “tangible moveable property” it must then be assessed to see whether it is “taxable property”.

Each of these steps is explained in more detailed below.

“Tangible moveable property” is defined as “things that you can touch and move”. HMRC include within this examples such as art, antiques and fine wine, however this can cover much more practical day to day items such as delivery vehicles, machinery and stock.

Having identified all “tangible moveable property”, each asset needs to be assessed in line with the following conditions to see whether it is “taxable property”. All four conditions must be met to ensure that an asset is not treated as “taxable property”. These conditions are:

1. The market value of the asset must not be greater than £6,000.
2. The interest in the asset must be held indirectly by the SIPP.
3. The asset must be held **solely** for the purposes of the administration or management of the Company that holds it directly.
4. Neither a scheme member, nor anyone connected to a scheme member personally, occupies or has use of the asset.

An example might help explain this further. A company in which a SIPP member wishes to invest is a haulage company. Their assets are identified as part of this process and it is confirmed that they own six HGVs, each worth in excess of £6,000. These are deemed “taxable property” and hence the investment would fail the Exemption.

Another example would be where the company had no assets over £6,000 but they have a computer valued at £1,000. The computer is not only used for administration of the company but for the provision of marketing information for customers. The computer would therefore be “taxable property” because it fails the third condition above as it is not **solely** for management/administration.

Further guidance on “Taxable Property” can be found on the HMRC website (see <http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM07109120.htm>). However special attention must be also given to the associated page at <http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM07109460.htm>.

Exemption B Questions

1. Can you confirm that the Company in which the unlisted shares are to be purchased is a UK company and does not hold any “taxable property” asset that has a market value of greater than £6,000?
2. Can you confirm that, on purchasing the proposed number of unlisted shares, the SIPP will not directly own any asset of the Company?
3. Can you confirm that the Company does not hold any “taxable property” assets that are used for trading purposes?
4. Can you confirm that neither the SIPP member, nor any connected party, will occupy or have any use of any taxable property asset of the Company that the unlisted shares are being purchased in?

! ■ STOP! Have you answered “Yes” to all of the “Exemption B Questions”? If so, then the proposed transaction is acceptable, in principle. If you have answered “No” to one of the questions under each of “Exemption A Questions” and “Exemption B Questions”, then the proposed transaction can’t proceed.

Important Note

These questions & outcomes should be used as an initial guide on the acceptability of a proposed transaction in relation to HMRC Regulations, but in no way as advice. On all aspects of any proposed unlisted shares purchase, the SIPP member must take appropriate independent advice from a suitably qualified financial adviser. Please note that Xafinity can’t provide such advice.

4. Unlisted Company Shares – Other Key Points

Associated Person – Definition

The term "associated person" in relation to the SIPP means: -

- Any member of the pension scheme.
- Any person connected with such a member.
- Any arrangement (under that or another pension scheme) relating to a member of the pension scheme.
- Any arrangement (under that or another pension scheme) relating to a person connected to such a member.
- Any associated pension scheme. For the full definition of an "associated pension scheme", please visit <http://www.hmrc.gov.uk/manuals/rpsmanual/RPSM07109440.htm>.

Connected Party – Definitions

Pension legislation requires consideration of whether any pension scheme transaction is with a "connected" party. Where the other party is deemed to be "connected", the pension scheme must be able to demonstrate that the transaction has been carried out on an arm's-length basis.

The definitions of a connected person and connected company are covered below. If you have any questions on whether a proposed transaction is "connected" or not, please contact Xafinity to discuss this.

Connected person

A person is connected with an individual if that person is the individual's wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual's wife or husband.

Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

Connected company

A company is connected: -

- (a) If the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other.
- (b) If a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.
- (c) With another person if that person has control of it or if that person and persons connected with him together have control of it.

In addition, any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

Notes on Connected Party Definitions

In these Connected Party definitions: -

- "company" includes any body corporate or unincorporated association, but does not include a partnership, and this section shall apply in relation to any unit trust scheme as if the scheme were a company and as if the rights of the unit holders were shares in the company;
- "control" shall be construed in accordance with Section 416 of ICTA 1988; and
- "relative" means brother, sister, ancestor or lineal descendant.

Controlling Director – Definitions

A Controlling Director is defined as “a member who, at any time after 16 March 1987 and within 10 years of retirement or leaving service or leaving pensionable service, has been a director and, either on his or her own or with one or more associates has beneficially owned or been able to control, directly, indirectly or through other companies, 20% or more of the ordinary share capital of the company”.

For the purposes of this definition: -

- (i) “Associate” means in relation to a director, any relative (i.e. spouse, forebear, issue or sibling) or partner (within the meaning of the Partnership Act 1890), the trustees of any settlement in relation to which the director is, or any relative of his or her (living or dead) is or was, a settlor and, where the director is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, the trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased, and
- (ii) The expression 'either on his or her own or with one or more associates' requires a person to be treated as owning or, as the case may be, controlling what any associate owns or controls, even if he or she does not own or control share capital on his or her own.

In terms of the governing legislation, where a SIPP member is a Controlling Director of a Company that the SIPP member wishes his/her SIPP to purchase unlisted company shares in, the fact that he/she is a Controlling Director does not in its own right mean that the purchase cannot take place. Any purchase is subject to the necessary indemnities and suitable Accountant letter being provided.

Connected Party Transaction

All “connected party” transactions must be carried out on an arm’s-length basis. Therefore, if the unlisted company shares are being bought from a connected party, an independent valuation of the shares is required.

Multi Member SIPP Investments

Where the purchase is a multi member purchase, Xafinity will provide a Multi Members’ Agreement (MMA) documenting each underlying SIPP member’s holding. In addition, the MMA also documents the legal position of all parties in relation to the ownership of the unlisted company shares. A draft copy of the MMA is available upon request.

Death Benefits

As SIPP Administrator, in the event of a member’s death, Xafinity must ensure that the member’s benefits are fully settled within two years of the date of death. Failure to do so, will result in tax charges being payable by the SIPP and also the SIPP Administrator, albeit these charges would be met from SIPP funds.

To meet this deadline, any unlisted shareholding would need to be sold or transferred within this two year period from date of death. Whilst a third party may wish to consider purchasing the shares on a member’s death, the SIPP member, the Company and their Advisers should consider whether alternative life assurance or shareholder protection type cover should be taken out. To be effective, these policies should be set up separately to the SIPP.

Please fully complete this questionnaire and return it to Xafinity.

(a) Please state the full name and reference of the SIPP that is to purchase the unlisted company shares.	
(b) Please provide the UK Company name, registered address and registration number of the Company that the SIPP is to purchase unlisted shares in.	
(c) Please detail the number of company shares to be purchased, the percentage of the Company shareholding that this represents and the expected cost. Also, are existing company shares being purchased or is this a new company share issue? For a new share issue, please provide the share offering memorandum (or similar) as evidence of the initial share price.	<p>Number of shares: Percentage of Company shareholding: Expected cost:</p>
(d) Please state whether the transaction meets “Exemption A” or “Exemption B”. Xafinity require this to prepare the appropriate indemnities and draft Accountant’s disclosure letter.	
(e) Please confirm the name of the vendor and if they are “connected” to the SIPP member. Where the vendor is connected, an independent valuation of the company shares will be required.	
(f) Please provide the vendor’s bank details. These will be required on the basis that the proposed purchase can proceed to allow the SIPP to pay by BACS.	<p>Account Name: Bank Name: Sort Code: Bank Account Number: Reference (if required):</p>
(g) If this is to be a multi member purchase, please detail the members and their proposed percentage holding of the total purchase.	

(h) Please provide the full name, address and telephone number of the Company Accountant or independent Accountant that will be looking to provide the required disclosure statement.
(i) Where there are associated Company agreements that are required in relation to the purchase, please provide the full name, address and telephone number of the Solicitor that will provide XPTL's legal advice (see Section 4). A copy of any such agreements should be sent to Xafinity as soon as these are available.
(j) Has advance clearance been obtained under ICTA 88, Part 17, Chapter 1, S.707?
If yes please provide a copy of the clearance confirmation from HMRC.
(k) Please provide details of who will be dealing with Stamp Duty (where applicable) on this transaction.
(l) Please provide the name of the person who advised you on this investment

Contacting Xafinity

SIPP Trustee: Xafinity Pension Trustees Ltd
SIPP Administrator: Xafinity SIPP Services Ltd

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