



Hazell Carr Small Self Administered Scheme (SSAS)

Leasing Property to a Connected Tenant

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As a valued client we're keen to ensure that you're kept up to date on important issues affecting your pension scheme. This bulletin contains important information about properties held within Small Self Administered Schemes (SSASs).

SSASs: Leasing a property to a connected tenant

Background

This summary tells you briefly about:

- the issues that you need to be aware of when a SSAS leases a property to a 'connected' tenant; and
- the potential tax charges that could be incurred if the rules are not followed.

A 'connected tenant' is, briefly:

- A member or spouse or relative of a scheme member;
- A partnership, where one of the partners is a member or relative of a scheme member; or
- The SSAS' Principal Employer.

The Key Rules

The tax rules require that:

- A full commercial lease must be in place;
- Rent must be at a market rate; and
- The landlord is expected to enforce the lease as a 3rd party would. This includes pursuing outstanding rent and any "late payment interest" if the lease dictates.

What needs to happen in these cases?

Where property is leased to a connected tenant:

- Unpaid rent is initially treated as a debt;
- The Member Trustees of the SSAS must take steps to recover outstanding rent and late payment interest, and this will be on a commercial basis;
- If the outstanding rent and late payment interest cannot be recovered, the outstanding amount becomes a "loan from the pension scheme". Unless HM Revenue & Customs (HMRC) criteria for loans is met, this loan will be treated as an unauthorised payment. One of the conditions for a loan is that it is secured on a first charge basis before the loan is made and therefore it is highly unlikely that any rent arrears will meet this condition;
- An unauthorised payment must be reported by the Scheme Administrator to HMRC within deadlines set by HMRC, and corresponding scheme tax charges paid; and
- The tenant must also report the "unauthorised payment" to their local Inspector of Taxes, and pay the corresponding tax charge.

Tax charges on the Scheme Administrator

- A charge of between 15% and 40% of the "unauthorised payment" amount is levied against the Scheme Administrator.
- It is likely that the Scheme Administrator will recover this charge from the SSAS.

Tax Charges on the tenant

- A charge of 40% of the “unauthorised payment” amount is assessed on the tenant; and
- Depending on the amount of the “unauthorised payment” as a percentage of the overall pension arrangement value, there may also be a 15% surcharge.

AMPS/HMRC Easement

In April 2009, the Association of Member-Directed Pension Schemes (AMPS) obtained guidance from HMRC. This confirmed that:

- If the tenant is in financial difficulty, HMRC are happy to accept in principal the re-negotiating of lease terms.
- Where the tenant is a company, HMRC do not expect dividends to be paid to shareholders in these circumstances.

Practical aspects

- Financial difficulty must be demonstrated: the tenant's accountant/auditor would be expected to provide evidence to support this;
- If a lower level of rent is to be considered, professional 3rd party advice must be obtained (e.g. from a surveyor) to support the reduced amount as being on a commercial basis. This can take into account rents in relation to similar properties in the current market and the prospect of getting a new 3rd party tenant.
- If a rent holiday is to be considered, professional 3rd party advice must be obtained (e.g. from a surveyor) to support this as being on a commercial basis. This can take into account other properties and lease terms in relation to similar properties in that area and the commercial terms that would be available to a new 3rd party tenant.
- Professional advice needs to be sought with regard to re-negotiating the lease, especially if the lease contains upward-only rent reviews.

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