



Hazell Carr Pensions Services (HCPS) SSAS

Unlisted Company Shares Guide

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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.

1. Unlisted Company Shares – An Introduction

Background

Unlisted UK company shares can be purchased by, and held under, the Hazell Carr (HCPS) Small Self Administered Scheme (SSAS). However, there are a number of points that need to be fully considered before doing so. Unlisted company shares in non UK companies cannot be held by the HCPS SSAS.

There are detailed regulations and potentially severe tax consequences applying to this area of investment. These are explained at a high level in the guide. With this in mind, **the SSAS Member Trustees 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 SSAS could fall foul of HMRC's Taxable Property Regulations. This would lead to unauthorised payment tax charges, which can be severe.

These regulations are effectively designed to prevent two things: -

- That a SSAS does not invest in anything that its members and/or Member Trustees either directly (or indirectly through their association with another party) control.
- That a SSAS does not invest in anything that allows its members and/or Member Trustees personal use and/or benefit.

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

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

Exemption A – Proposed SSAS shareholding is less than 20%

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/rpsmanual/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 SSAS 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 SSAS can hold on its own and/or in conjunction with the SSAS members (and any connected individual or party) is 19.99%.

Exemption B – To be used where Exemption A doesn't apply

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 SSAS.
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 SSAS 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/rpsmanual/RPSM07109120.htm>). However special attention must be also given to the associated page at <http://www.hmrc.gov.uk/manuals/rpsmanual/RPSM07109460.htm>.

Where the purchase meets this exemption, the Company Accountant of the Company in which unlisted company shares are to be purchased (or an independent Accountant) must therefore 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.

As can be seen from the above, this Exemption is highly unlikely to be relevant to the large majority of investments made in trading companies and we would stress that each investment proposed as meeting this Exemption must be examined carefully.

HCPS' Role

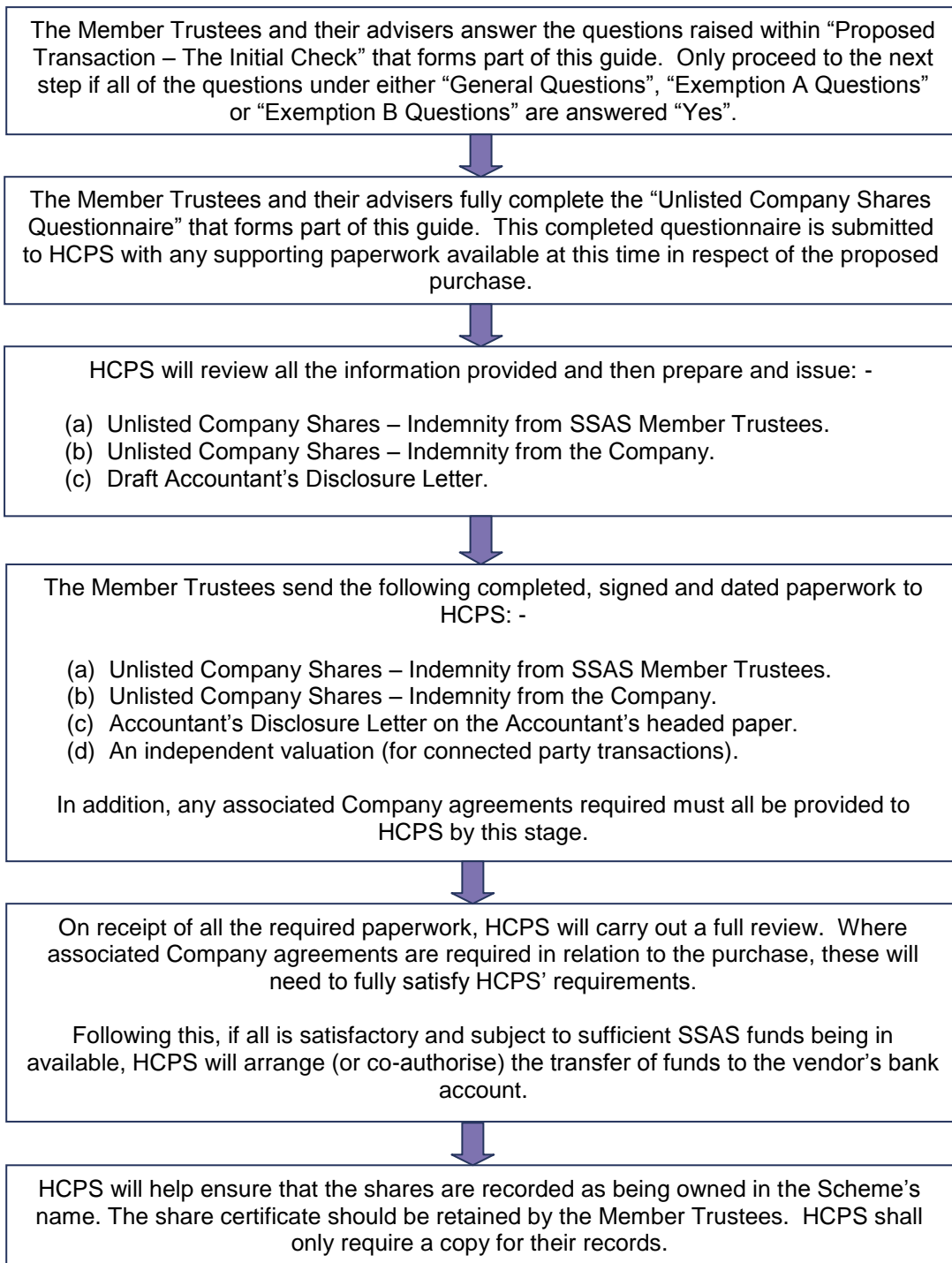
Our key role is to help all parties understand governing HMRC Regulations to allow them to consider if a proposed transaction is acceptable or not. In addition, where the transaction does proceed, we are here to help co-ordinate the transfer of ownership and assist all parties through the various stages.

Our Fees

HCPS 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 HCPS. These fees are in addition to any legal, accountant or valuation fees.

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

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”.

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 the trustees 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 Questions

1. Is the Company that the unlisted shares are to be purchased in a trading UK Company?
2. On purchasing the proposed number of unlisted shares, will the SSAS own less than 20% of the Company’s shares?
3. On purchasing the proposed number of shares, will the SSAS 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 SSAS members, nor a connected party of the SSAS members, 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 SSAS members, nor a connected party of the SSAS members, 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 SSAS is not purchasing unlisted shares in the Company for the purposes of enabling any SSAS member or a connected party of the SSAS members, 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” overleaf 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” overleaf.

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 SSAS 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 SSAS members, 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 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 SSAS Member Trustees must take appropriate independent advice from a suitably qualified financial adviser. Please note that HCPS can’t provide such advice.

4. Unlisted Company Shares – Key Points

Associated Person – Definition

The term "associated person" in relation to the SSAS 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 HCPS 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 SSAS member is a Controlling Director of a Company that the SSAS Member Trustees wish 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.

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 Company the Accountant is usually from an independent firm.

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.

Maximum Investment in Unlisted Company Shares

The following are the limits applied to purchasing shares in sponsoring employers or associated employers of a SSAS: -

- If only one employer participates in the scheme, the investment must be less than 5% of the scheme net assets.
- If more than one employer participates in the scheme, the investment must be less than 20% of the scheme assets in total and the above limit of 5% in each employer applies.
- For this purpose, assets are valued at the point of purchase of the shares. Unquoted shares must be independently valued.

In principle, it is possible for a SSAS to hold 100% of a sponsoring (or associated) employer's share capital, however this is subject to the above not being breached and could only be achieved if the SSAS investment also satisfied the requirements of Exemption B.

For the HMRC legislation, see <http://www.hmrc.gov.uk/manuals/rpsmmanual/rpsm07105020.htm>.

Shareholders' Agreements & Legal Advice

Following the purchase of unlisted company shares, the shares are held in the name of the SSAS. As the company shares are in the name of the SSAS, the responsibility of exercising any voting rights in relation to the shareholding lies with the Member Trustees collectively. The potential liability of the SSAS in terms of any agreement in respect of the unlisted company shares must be limited to the value of the SSAS funds. 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 the SSAS will need to sign in tandem with an unlisted share purchase, the Member Trustees must obtain legal advice on behalf of the SSAS. HCPS cannot offer this legal service, so the Member Trustees will need to consider and choose the Solicitor that will represent the SSAS to ensure all requirements are met. The costs attributed to any such legal advice will be payable from SSAS funds.

Death Benefits

In the event of a member's death, the SSAS Administrator must ensure that any lump sum death benefit is settled within two years of the date of death. Failure to do so, will result in tax charges being payable by the SSAS and the SSAS Administrator, albeit these charges would be met from the SSAS 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 SSAS Member Trustees, 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 SSAS.

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 approving the proposed purchase of unlisted company shares, it will generally take around four to five weeks to complete this.

5. Unlisted Company Shares Questionnaire

Please fully complete this questionnaire and return it to HCPS.

<p>(a) Please state the full name and reference of the SSAS that is to purchase the unlisted company shares.</p>	
<p>(b) Please provide the UK Company name, registered address and registration number of the Company that the SSAS is to purchase unlisted shares in.</p>	
<p>(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>	<p>Number of shares: Percentage of Company shareholding: Expected cost:</p>
<p>(d) Please state whether the transaction meets “Exemption A” or “Exemption B”. HCPS require this to prepare the appropriate indemnities and draft Accountant’s disclosure letter.</p>	
<p>(e) Please confirm the name of the vendor and if they are “connected” to the SSAS. Where the vendor is connected, an independent valuation of the company shares will be required.</p>	
<p>(f) Please provide the vendor’s bank details. These will be required on the basis that the proposed purchase can proceed to allow the SSAS to pay by BACS.</p>	<p>Account Name: Bank Name: Sort Code: Bank Account Number: Reference (if required):</p>
<p>(g) 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.</p>	

(h) 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 the Member Trustees' legal advice (see Section 4). A copy of any such agreements should be sent to HCPS as soon as these are available.

(i) Please provide the name of the person who advised the scheme trustees on this investment.

Contacting HCPS

HCPS SSAS Department
Scotia House
Castle Business Park
Stirling
FK9 4TZ

www.xafinity.com

Tel: 01786 434250

Email: SSAS&SIPP@xafinity.com

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