talbotandmuir

SSAS Loanbacks

Guidance Notes

This document is provided for use by professional advisers in conjunction with products provided by Talbot & Muir. The information in this document is based on our interpretation of the relevant HMRC guidelines, which are subject to change.

Overview

Under most circumstances loans from registered pension schemes to the scheme member or any party connected to them (as defined under section 839 of the Income and Corporation Taxes Act 1988) are discouraged by HMRC rules. Any such loans are subject to unauthorised payment tax charges, which will total at least 55% of the value of the loan.

One exception to this rule is a loan made to the sponsoring employer of an occupational pension scheme. Where the loan is made from a Small Self Administered Scheme (SSAS) it is commonly known as a "loanback".

In order to be regarded as an authorised (i.e. tax exempt) employer loan, five tests have to be met, Security, Interest rate, Term of loan, Amount of loan and Repayment terms.

Security

The loan must be secured throughout its term by a first charge over an asset with a value at least equal to the value of the loan plus interest. The asset does not need to be owned by the sponsoring employer, however there can be no other charge – including a floating charge – that takes precedence over the charge of the pension scheme.

If the asset is replaced during the term of the loan, the asset used as security instead must have a value at least equal to the lower of:

- The market value of the asset being replaced; or
- The value of the remaining loan plus interest.

In practical terms, the value of the asset must be determined by an independent market valuation from an accountant, chartered surveyor, or other qualified person.

In December 2009 (and in further announcements throughout 2010) HMRC clarified its position with regard to the use of taxable property, such as residential property or chattels, as security for registered pension scheme loans. If an investment regulated pension scheme acquires a direct or indirect interest in taxable property, then the amount paid is normally treated as an unauthorised payment (see the section on unauthorised payments below). Where an authorised employer loan is secured against taxable property, an unauthorised payment will be regarded by HMRC as having been made in the following circumstances:

- Where arranging security for the loan incurs legal or administrative costs, and those costs are paid from the pension scheme's assets (rather than, for example, paid by the sponsoring employer), the amount paid will be treated as an unauthorised payment.

- If the loan recipient defaults, and the pension scheme enforces its charge over the taxable property, HMRC will treat that acquisition of a further interest in the property as an unauthorised payment equal to the value of the scheme's interest i.e. the outstanding loan balance.

In order to reduce the possibility of the scheme members or the pension scheme becoming liable for unauthorised payment tax charges, or to provide the necessary liquidity to settle the scheme administrator's tax liability, Talbot & Muir insist on the following conditions where taxable property is used as security for a SSAS loanback:

- Legal and administrative costs relating to the establishment of the pension scheme's charge over the taxable asset should be paid by the sponsoring employer of the scheme.

- No less than 40% of the outstanding balance of the loan plus interest should be retained by the pension scheme at all times in the form of readily realisable assets (such as cash, quoted securities, unit trusts, etc.).

Talbot & Muir will accept some forms of taxable property as security for SSAS loanbacks, including UK residential property subject to satisfactory prior vetting. A first charge may be placed on residential property that will satisfy HMRC requirements and should not result in an interest in the property being created on default. Due to the complexity of this matter we insist that our panel solicitors complete the charge to ensure every precaution is taken to prevent an unauthorised payment arising.

Interest Rate

The minimum interest rate that can be applied to an authorised employer loan is prescribed by HMRC, and must be no less than 1% above the average clearing bank base rate for six nominated High Street banks rounded up to the nearest 0.25%. This rate will be calculated at the reference date in accordance with HMRC's Prescribed Interest Rates for Authorised Employer Loans Regulations 2005.

The applicable rate is published on HMRC's website.

Term of Loan

An authorised employer loan must be for a fixed term not exceeding five years, although it can be rolled over once for an additional term not exceeding five years.

Amount of Loan

The loan amount must be no more than 50% of the aggregate value of the scheme assets at the point at which the loan is made, taking into consideration any existing loans/borrowing. The scheme's value is calculated as the total of any cash held, plus the market value of other assets immediately before the loan is made.

Repayment Terms

Loan repayments must be made in equal instalments of capital and interest for each complete year of the loan. If a loan payment is missed, or if the amount due to be repaid in any borrowing year is less than required under this rule, then an unauthorised payment is deemed to have been made.

Other conditions

Before granting a loan to a sponsoring employer, Talbot & Muir are required to conduct Anti-Money Laundering checks in relation to the company, and we may also conduct a credit check if we deem it necessary. Any data collected by Talbot & Muir or the scheme trustees will only be held for as long as necessary and in conjunction with the administration of the pension scheme.

Solicitors

Although Talbot & Muir have a panel of solicitors, the trustees of the pension scheme can elect to instruct any solicitor of their own choosing to conduct the legal work relating to the loanback, unless a UK residential property is to be used as security. Solicitor fees in respect of the security agreement should be paid by the borrower.

Purpose of Loanback

The purpose of the loan must be for bona fide business purposes, and not to enable the sponsoring employer to remain trading in the short term. A loan will not be made to a company that is insolvent.

The Borrower must use the borrowed money for a business purpose to benefit the Borrower's trade or profession. The Borrower may be asked by HMRC to produce receipts or other evidence to demonstrate how the funds have been used.

Unauthorised Payments

The breach of many of HMRC's requirements, including the rules on loan security and the rate of interest charged, can lead to the loan (or part of it) being deemed an unauthorised payment. This can lead to the sponsoring employer and the scheme administrator becoming liable for a number of tax charges:

Unauthorised payment charge

The unauthorised payment charge is payable by the recipient of an unauthorised payment (in the case of an unauthorised employer payment, the sponsoring employer of the pension scheme). The charge will be at a rate of 40% of the amount of the unauthorised payment.

Unauthorised payments surcharge
If the total unauthorised payments from any registered pension scheme exceed 25% of the scheme assets in any twelve month period, the recipient of the payments will be liable for a further free-standing charge of 15% of the surchargeable payments.

Scheme sanction charge
Provided an unauthorised payment is made with the knowledge and consent of the scheme administrator, the scheme administrator will be liable to a scheme sanction charge. The starting level of the charge is 40% of the amount of the unauthorised payment, although if the payment is also subject to an unauthorised payment charge, the scheme sanction charge will be reduced by the lower of:

- The amount of the unauthorised payment charge that has been paid, or
- 25% of the scheme chargeable payment(s).

Where the unauthorised payment charge is paid in full, this has the effect of reducing the scheme sanction charge to 15%.

Talbot & Muir accept no liability for scheme sanction charges due in respect of payments made at the direction of the scheme members or trustees; any such charges will be paid out of the pension scheme funds, and it is for this reason that we require that 40% of the value of a loan secured against taxable property should be held in readily-realisable assets. 40% of the value of the loan is the maximum possible scheme sanction charge, where the loan recipients do not pay any part of the unauthorised payment charge.

For full terms and conditions, and details of the applicable administration charges, please request a copy of our SSAS Loanback Application form.

talbotandmuir

Talbot and Muir
55 Maid Marian Way
Nottingham
NG1 6GE
Telephone 0115 841 5000
Facsimile 0115 841 5027

www.talbotmuir.co.uk