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In Specie Contributions

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

In addition to making a contribution to a pension scheme in cash, it is also possible to make a contribution in the form of an asset. The asset in question can be any asset, subject to HMRC's rules on investments in taxable property (such as residential properties), and any further restrictions imposed by the pension provider. The process is somewhat more complex than a cash contribution, although the same annual limits apply, and tax relief will be applied in the normal way.

The Debt Obligation

In the strictest sense HMRC does not allow in specie contributions; you cannot merely say that you wish to make a contribution of a given asset to your pension scheme. Instead it is necessary to create a cash debt to the pension scheme, and that debt will be discharged by transferring the asset to the scheme.

For this reason (and others) it is important to know the market value of the asset on the date it is transferred. If on the date of the transfer the asset is worth less than the debt to the pension scheme, the shortfall must be made up by the scheme member by a further cash contribution. If the value of the asset exceeds the value of the debt, the excess must be returned by the pension scheme to the scheme member.

Some assets fluctuate in value more than others, and in this respect at least the more stable the value of the asset the simpler the transaction tends to be. The value of commercial property will generally fluctuate a lot less, for example, than a unit trust or company shares.

Tax Implications

An in specie contribution is treated as a disposal for money's worth for Capital Gains Tax purposes. The CGT liability falls on the vendor of the asset. If applicable, the contribution will also be subject to stamp duty and VAT as if the asset were being purchased normally, and the liability for these charges falls on the pension scheme. A certain amount of liquid funds may therefore need to be available in order that the pension scheme can settle these tax charges, and where VAT is payable on a commercial property we would recommend that the pension scheme is registered for VAT to reclaim this cost.

In addition to the contribution attracting basic rate tax relief at source, and higher or additional rate relief via self assessment, once the asset is held by the pension scheme all of the normal tax advantages apply: further growth in the value of the asset is free from CGT, rental income is free from income tax, etc.

Tax Relief

In specie contributions also qualify for tax relief under the same conditions as cash contributions:

- Personal contributions will only attract tax relief up to the higher of 100% of the scheme member's earnings for the tax year in which the contribution is made, or £3,600.

- Employer contributions will not attract corporation tax relief unless they are "wholly and exclusively for the purposes of trade".

In specie contributions are tested against the annual allowance in exactly the same way as cash contributions.

Commercial Property

In terms of the legal and administrative processes involved, an in specie contribution of property is treated in much the same way as a purchase of the property by the pension scheme from the scheme member (or their employer). Because HMRC regard this as a "connected transaction", it must be demonstrated that the property is treated as having been transferred to the pension scheme at its market value. For these purposes an independent market valuation of the property is required.

We will also have to undertake all of the normal checks of the site prior to allowing the contribution to go ahead. An environmental survey of the site will have to be performed (unless the contribution is being made to a SSAS scheme, where a Restriction of Title arrangement can mean that this report is unnecessary) and solicitors will have to carry out all the necessary local searches of the property. As with other property acquisitions, scheme members have the option of appointing their own solicitors, or alternatively a solicitor from our panel can represent them. For any property-related work conducted for one of our SIPPs, we insist that a solicitor from our panel at least represents the corporate trustees of the pension scheme in a checking capacity.

The normal legal process is supplemented by further documentation creating the debt obligation to the pension scheme, required to treat the transaction as a contribution rather than a purchase.

One important difference between a contribution of property and a normal property purchase is that it is not possible to make a contribution of a property with an outstanding mortgage; any existing borrowing must be repaid in full before the property can be transferred to the pension scheme.

The date that the acquisition of the property completes is treated as the date of the contribution, which could have implications both for the application of the annual allowance, and for the eligibility of the contribution for tax relief.

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