

Syndicated property purchases

Guidance Notes

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

Property purchase overview

SIPPs and other registered pension schemes can purchase certain types of real estate, either from the scheme member or their employer, or from an unconnected third party.

What can SIPPs purchase?

- Commercial property, including industrial units, offices, hotels, and certain types of permitted job-related residential property.
- Land, including agricultural property (but not including farmhouses or other residential accommodation).
- Property in the process of being converted from commercial use to residential, or vice versa, provided the property is not suitable for use as a dwelling whilst owned by the SIPP.

A SIPP can also pay for improvements and structural work to a property that it owns, but not for any tangible moveable property (e.g. chattels, plant and machinery), and a registered pension scheme cannot purchase properties regarded by HMRC as residential. Both of these types of assets are taxable property if purchased by a registered pension scheme.

Can a SIPP have a mortgage?

It is possible for pension schemes to borrow money to provide extra liquidity for any type of investment, including for a property purchase. The borrowing does not have to be secured, although a high street bank is unlikely to offer an unsecured loan to a pension scheme.

A pension scheme is limited to borrowing only up to 50% of the net value of the scheme assets at the point a mortgage is taken out. Although a fall in the value of the pension fund may mean that at certain points during the lifetime of the loan this limit is exceeded, provided no additional borrowing is taken out the limit will not be judged to have been breached. Re-financing a mortgage, except where the terms of the new loan are substantially different, will also not trigger a test of the 50% limit.

If the 50% limit is breached (for example, where a pension scheme takes out additional borrowing) the excess is treated as a scheme chargeable payment subject to a 40% tax charge.

Can a pension scheme purchase property owned by the member?

Pension schemes are able to purchase assets from the scheme member and connected parties (including connected companies, such as the member's employer). However, it must be demonstrated to the satisfaction of HMRC that any such purchase takes place "at arm's length". In practice this means that the pension scheme will have to purchase property from a connected party for its market value, as determined by an independent valuation. The same goes for the level of rent that the pension scheme should charge a tenant with a connection to the scheme member.

Taxation

The acquisition of property by a pension scheme is treated as a disposal for money's worth. This could mean a CGT/Corporation Tax liability for the vendors of the property, as well as a potential Stamp Duty Land Tax liability for the pension scheme.

If the property purchase is subject to VAT then the pension scheme will also be liable for this additional expense, although a pension scheme (or group of pension schemes) can be registered for VAT to reclaim any VAT paid from HMRC. Provided the normal conditions are met, a pension scheme can also accept a transfer of property as a going concern, which will mean no VAT is payable at the point of purchase.

Syndicated property purchases

A group of individual SIPP schemes can each purchase a share of a commercial property, in a "syndicated" arrangement. This is different from a group SIPP scheme or a SSAS, which are single pension schemes with more than one member. Each SIPP in a syndicated arrangement can sell or increase its share of the property independently, and can borrow to help fund the purchase (subject to the 50% rule).

Whilst it is important to remember that each SIPP will have its own separate share of the property – each SIPP remains a separate legal entity – a Scheme Administrator can take steps to minimise the complexity involved in a syndicated purchase.

It is Talbot and Muir's practice, for example, to open an additional joint bank account held between every SIPP scheme with an interest in the property. Every scheme member will pay into this joint account from their individual SIPP bank accounts, and the ownership of the joint account will be determined by the amount that each member contributes. Talbot and Muir would then act as the sole signatory of the joint account, and it is our responsibility to ensure that the ownership of the account is altered to reflect any payments made into it, and that any payments made from it are in the same proportions.

From the scheme members' point of view they will each have a share of the joint bank account – and any assets purchased using funds from that account – that exactly matches whatever they have contributed towards it. From the point of view of the vendors of the property purchased using those funds, only a single buyer is involved, although in reality a number of separate pension schemes may be contributing.

Alongside the property investment, the remaining assets of the SIPP can be invested as the member wishes, and each SIPP will have its own separate bank account. Benefits can be taken from the SIPP whenever the member likes after the normal minimum pension age of 55, although the payment of the tax-free Pension Commencement Lump Sum and a taxable pension income will rely on having funds available to do so; if necessary the payment of a PCLS can be deferred for up to 12 months from the date benefits are first taken from the scheme.

Ownership

Ordinarily properties purchased by a single SIPP are owned by the corporate trustee of the scheme (in the case of Talbot and Muir SIPPs, the corporate trustee is T M Trustees Ltd). In a syndicated arrangement, there may be many scheme members with an interest in the property and therefore a separate legal document will be drawn up, called a Declaration of Trust, which sets out what proportion of the property is owned by each member's pension scheme.

A Declaration of Trust is not only a useful mechanism of recording the ownership of a property by multiple parties, but also means that if necessary the scheme members can transfer their share of the property between themselves, or to another Talbot and Muir SIPP, provided all such transactions take place on an "arm's length" basis i.e. paid for at the market value of the property as determined by an independent valuation. This will necessitate a new Declaration of Trust, which will incur additional legal fees, but the Land Registry does not need to be notified, and stamp duty will not be payable, as legally the property will continue to be owned by T M Trustees Ltd.

Deed of pre-emption

It is usual for SIPP members in a syndicated arrangement to have a Deed of Pre-Emption put in place to give the other members first refusal should one member elect to sell their share of the property, or if a member dies and their share is to be sold to provide liquidity for a death benefit lump sum payment.

Case study

The three partners of an accountancy practice decide to establish separate Talbot and Muir SIPPs in order to purchase their business premises, independently valued at £200,000, subject to VAT.

The members elect to use a solicitor from Talbot and Muir's panel for the purchase, and Talbot and Muir will be responsible for registering the pension schemes for VAT. The members provide Talbot and Muir with a recent independent valuation of their property, produced by a chartered surveyor.

Along with their individual SIPP application forms, the members provide Talbot and Muir with one copy of our SIPP Property Questionnaire, Property Administration & Risk Warning Notice, and Landmark Environmental Report Questionnaire, along with a cheque payment to Talbot and Muir for the cost of the environmental report. This cost can be reimbursed to the members once they have available funds in their pension schemes.

Talbot and Muir establish SIPP schemes for the members, each with their own pension scheme bank account. A joint property account is also opened for the members.

Talbot and Muir instruct one of our panel of solicitors to begin work on the property purchase, and send them the completed SIPP Property Questionnaire, Landmark environmental report, and property valuation, along with suitable anti-money laundering documents for the scheme members. The members are also asked to provide a cheque payable to the solicitors, to cover the cost of the Local Authority searches that must be performed; as with the environmental report fee, this cost can later be reimbursed to the members using pension scheme funds.

Talbot and Muir register the pension schemes for VAT. This process can take a number of weeks, depending on HM Revenue & Customs. VAT paid on the purchase price of the property can be reclaimed, however, even where registration is completed after the purchase.

Each client transfers benefits they have accumulated in personal pensions to their new SIPP schemes. Client A transfers £180,000, and clients B and C each transfer £60,000.

Over the next few weeks Talbot and Muir liaise with the solicitor and the members, providing any information required, and executing or forwarding documentation when necessary. The solicitor informs Talbot and Muir that the property purchase is ready to complete, and provides a completion statement that includes their own legal costs, the purchase price of the property, plus disbursements:

Property purchase price:	£	200,000
VAT @ 20%:	£	40,000
Stamp duty:	£	1,800
Legal costs (incl. VAT):	£	2,400
Disbursements:	£	200
Total:	£	244,400

Talbot and Muir also charge a one-off fee of £800 plus VAT for administrative work in relation to the property purchase, and a further £100 plus VAT for registering the schemes for VAT, meaning the total payable by the members is £245,480.

The members have agreed that client A will purchase 60% of the property, and clients B and C will purchase 20% each. Each client therefore needs to transfer the following amount to the joint property account:

- Client A: £245,480 x 60% = £147,288
- Client B: £245,480 x 20% = £49,096
- Client C: £245,480 x 20% = £49,096

The members make the cash transfers from their individual scheme accounts to the joint property account, and Talbot and Muir transfer the entire completion amount to the solicitor's account.

The following fees are payable to Talbot and Muir from each member's individual bank account, for establishing the schemes:

SIPP Establishment fee (Application submitted online):	£	0
SIPP Administration fee:	£	785

No fees are charged in relation to the cash transfers to the new SIPP schemes. Note that all of Talbot and Muir's fees are subject to VAT.

Once the VAT registration of the schemes is complete, the pension schemes can reclaim VAT paid on expenses relating to the property purchase:

VAT paid on property purchase price:	£	40,000
VAT paid on legal costs:	£	400
VAT paid on T&M property purchase fee:	£	160
VAT paid on T&M VAT registration fee:	£	20
Total VAT reclaimed:	£	40,580

We have not included details of property insurance or lease arrangements for the property, but work related to drafting or re-assigning the lease is ordinarily done alongside the work relating to the purchase of the property. It is important to remember that if the tenants of the property are connected to the scheme members, as in this example, the level of rent paid must be in accordance with an independent rental valuation. In a syndicated property arrangement, rental income is divided amongst the scheme members in accordance with the ownership of the property; using our case study, client A would be entitled to 60% of the rental income, and clients B and C would be entitled to 20% each.

This example assumes that no borrowing is required (or requested) by the scheme members. For our full range of charges, including those relating to SIPP borrowing, please refer to our Schedule of Fees & Services.

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