

SSAS

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# Property notes

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## 1. Introduction

These Notes set out the issues involved should your SSAS purchase a commercial property, and it is important that you read these notes carefully. HM Revenue & Customs (HMRC) imposes certain requirements on us as administrator and these requirements, along with our terms and conditions in relation to the investment in commercial property, as set out in these property notes, must be strictly adhered to.

If the trustees wish to proceed with a property purchase then our Property Questionnaire must be completed and returned to AJ Bell.

For the purpose of these notes the term 'property' also includes land.

We have also prepared some additional Guidance Notes for solicitors, commercial lenders and chartered surveyors, which are available upon request.

We will forward these Guidance Notes to the relevant parties and it is therefore important that you provide their details in the Property Questionnaire.

## 2. The property

A SSAS can only purchase commercial property and not normally property with any residential element. Special rules apply for mixed commercial and residential properties.

Hotels, guest houses, pubs with a residential element, and nursing homes will all require special consideration, as will nurseries and other buildings where the trade is clearly identified with the property. Such properties are unlikely to be acceptable.

If the trustees intend to purchase a residential property for conversion to offices or some other commercial purpose, then the change of use must be confirmed before the property is purchased.

Land with attaching sporting rights will also require special consideration.

Development land and agricultural land are both acceptable investments although residential developments are not allowed. There are a number of circumstances when HMRC may treat property transactions for taxation purposes as if the scheme was trading. We recommend you take tax advice if you believe this may be of relevance.

Whilst freehold property and property held on a long lease (with a minimum unexpired term of 50 years) are acceptable, short-term leasehold property will not normally be acceptable.

Properties with any history of, or potential for, contamination problems are unlikely to be acceptable.

Your property advisers will be able to provide further information on the implications of Part II A of the Environmental Protection Act 1990 and subsequent relevant legislation.

It is not our normal practice to buy property at auction.

Property should be viewed as a long-term investment and a SSAS must have sufficient liquidity to be able to secure the benefits payable to each member should they wish to receive some or all of their entitlement to benefits. Careful consideration must be given to any property investment if benefits for any member are likely to commence in the short to medium term, or have already commenced.

We reserve the right to refuse to purchase any particular property if, in our opinion, it is not a suitable investment for a pension scheme, for example if the property is of a very specialised nature or if we anticipate re-sale difficulties.

## 3. The vendor

If you are connected to the vendor we will only allow the transaction to take place on an arm's-length value as determined by a chartered surveyor. 'Connected' for this purpose is defined in section 993 of the Income Tax Act 2007. The definition is quite complicated although does include you, close members of your family and any business with which you are associated.

## 4. The legal owners

Legally the property will be jointly owned by each of the trustees of the SSAS, including AJ Bell Trustees Limited. Further details on legal ownership are provided in the Guidance Notes for solicitors which are available upon request.

We will require a copy of the Land Registry transfer document, completion statement and a copy of all current leases in relation to the property. We will normally obtain these directly from the trustees' solicitor. It is the responsibility of the trustees to arrange for original documents and title deeds to be kept in a secure place although we must have access to these at all times and reserve the right to lodge any such documents with our solicitors at the expense of the SSAS.

## 5. Valuations

Before the property is purchased we will require a valuation and a surveyor's report, which must be addressed to the trustees of the SSAS.

The report must specify:

- market value;
- rental value if there is a new tenant (having regard to the proposed terms of the lease);
- rebuilding valuation for insurance purposes; and
- whether a structural survey or other detailed investigation is recommended.

The property will need to be valued regularly in accordance with the rent review clause within the lease.

We reserve the right to appoint a chartered surveyor, at the expense of the SSAS, to carry out any work we require.

Once you have appointed a surveyor to act on behalf of the trustees then you must make it clear to them that they are advising the trustees. We have separate Guidance Notes for surveyors available upon request.

## 6. The purchase

The trustees will need to appoint a solicitor to carry out the conveyance of the property.

The trustees must make it clear to them that they are advising the trustees. We have separate Guidance Notes for solicitors, which are available upon request.

The trustees must ensure that there is sufficient cash in the trustees' bank account to cover the purchase price and various costs associated with the property purchase.

For most purchases, the vendor must provide the purchaser with an Energy Performance Certificate (EPC). When you receive an EPC, please ensure we are provided with a copy. It is important that, where this is required, you obtain the EPC, as failure to do so may result in delays when wishing to let or sell the property.

## 7. Tenants

The trustees can lease the property to an unconnected third party, or alternatively can lease the property to an employer participating in the scheme, or any company associated with that employer, or any other connected person, subject to the rent payable and the terms of the lease being on a fully commercial, arm's-length basis as assessed by a chartered surveyor.

A lease must be entered into, and we will normally insist on a full repairing and insuring lease.

Please be aware that we must complete identity and verification checks on all tenants. It is important that you provide us with full details of all existing and proposed tenants at the earliest opportunity to avoid delays.

The property manager chosen by the trustees will be responsible for the management of the property and in particular for the collection of rent and ensuring that the terms of the lease are being adhered to. We strongly recommend that, unless the trustees have specialist property knowledge, they appoint a third-party property management company to carry out these duties.

We reserve the right to appoint a third-party property management company of our choice if we experience difficulties administering the property. Such a course of action will be unavoidable if rent is not paid on time by you, or a connected party, as tenant. The cost of this will be borne by the SSAS.

We have an obligation to HMRC to monitor that all rent is received when due and the trustees must enforce the terms of the lease at all times, particularly when the tenant is connected. If rent is in arrears then we will be obliged to seek recovery, on behalf of the trustees, by whatever methods are deemed appropriate.

Unless we specifically appoint an agent to collect the rent on the trustees' behalf, the rent must be paid directly into the trustees' bank account.

Where the landlord and the tenant are connected and rent is not being paid in accordance with the terms of the lease, this may be an unauthorised payment as defined in the Finance Act 2004. If an unauthorised payment is made by the SSAS, HMRC will impose a tax charge on the member(s), or sponsoring employer of between 40% and 55% of the unauthorised payment. In addition, a scheme sanction charge of between 15% and 40% of the payment will be imposed on the scheme by HMRC. The administrators of the SSAS are required to report to HMRC any unauthorised payments made.

We strongly recommend that if you, or your company, or a connected person, are the tenant, you pay rent by standing order strictly in accordance with the lease.

The Control of Asbestos Regulations 2012 require that the duty-holder, that is, the person responsible for maintaining and repairing any commercial property, is responsible for the identification and management of asbestos within the property. Under a full repairing and insuring lease, this responsibility will normally fall to the tenant. For further information, please contact your property advisers.

## 8. Lease

If there are leases in existence when the property is purchased, the trustees will take over these leases.

If a new lease is required, then the trustees will need to appoint a solicitor to provide advice in conjunction with the preparation of the new lease. The new lease will be a full repairing and insuring lease and have no onerous covenants on the trustees.

It would be normal for the solicitor dealing with the purchase to deal with the lease as well.

If there are any ground rents or service charges payable by the trustees, for example if the trustees own a leasehold property or own a multi-tenanted property, then the trustees must pay these costs out of the SSAS.

The trustees must make an Energy Performance Certificate (EPC) available at the point the property is marketed for letting. The EPC must be given to the tenant when the lease is executed. Failure to comply with this requirement may result in significant fines.

## 9. Refurbishments or extensions

The cost of any refurbishments or extensions can be met by the SSAS as long as this is in accordance with the terms of the lease. We will at all times require invoices (addressed to the trustees of the SSAS) for work carried out. Work can be undertaken by yourself, or a connected person, but only on an arm's-length basis as verified by a suitably qualified professional.

If improvements are carried out at the request of the tenant that are not within the normal repairing and maintenance terms of the lease, then the rent must be reviewed, and increased if appropriate. This will involve a variation to the existing lease and a revised independent rental valuation.

Our written agreement must be obtained before any such work is carried out. Full details of your proposals along with written quotations should be provided to enable us to consider your request.

## 10. Trustee borrowing

The trustees of a SSAS can borrow money on commercial terms to assist with the purchase of a property.

HMRC rules do not allow the trustees to borrow in total more than 50% of the net asset value of the SSAS immediately before the borrowing takes place. This borrowing limit includes existing borrowing and any amount borrowed to finance VAT on the property purchase.

### Example:

The trustees of Jones Ltd SSAS are considering the purchase of a further commercial property at a purchase price of £400,000 plus VAT = £480,000. For the purpose of the example, additional legal and other costs are ignored.

The current assets held by the SSAS are:

Cash at bank	£250,000
Property	£750,000
LESS existing borrowing	<u>(£200,000)</u>
Total NET asset value	£800,000

The maximum borrowing (50% of the net asset value)	£400,000
LESS existing borrowing	<u>(£200,000)</u>
Leaves a maximum available borrowing limit of	£200,000

The funding for the new property is therefore as follows:

Existing available cash at bank	£250,000
Available borrowing	<u>£200,000</u>
Available for property purchase	£450,000

In this example there is a shortfall of £30,000, therefore if the trustees are to purchase this property, an additional contribution will be required.

New borrowings will be allowed once benefits have commenced.

The property, or any other asset of the SSAS, can be used as security for the loan but members cannot provide personal guarantees in relation to the loan.

We must be provided with a copy of the offer letter as soon as it is available.

We will insist on the trustees' liability in relation to the loan being limited to the value of the fund.

If any of these requirements are not acceptable to the lender then an alternative source of finance will have to be found.

It is the member trustees' responsibility to ensure that there are sufficient funds at all times to meet the mortgage repayments.

We do not get involved in arranging finance and you should liaise directly with the lending institution at all times.

We have separate Guidance Notes for commercial lenders which are available upon request.

## 11. Sale of the property

When the trustees decide to sell the property, they will normally appoint suitably qualified agents to advise them on the best way to market the property and the selling price. If the property is to be sold to a connected party, a valuation must be obtained from a suitably qualified valuer to confirm that the sale price represents the true market value of the property.

When you are marketing the property for sale, an Energy Performance Certificate (EPC) must be made available to interested parties. When the property is sold, the EPC must be given to the purchaser. You and/or the agent are responsible for meeting this requirement. Failure to comply can result in significant fines.

## 12. Joint property purchase

Joint property purchases will be considered on a case-by-case basis.

If agreed, ownership of the property will be subject to an agreement between all of the trustees and the other joint owners which will normally be prepared by the conveyancing solicitor. This agreement must specify that in the event of the trustees of the SSAS wishing to sell part, or all, of their share in the property (for example to pay benefits) then the other owners will either purchase the relevant share of the SSAS at the appropriate percentage of market value, or alternatively the entire property will be sold. The terms of this agreement are important and we have agreed the wording of such an agreement which is available on request, although legal advice must be sought to confirm its suitability.

This agreement must also cover the proportion of the property to be owned by the SSAS. Subject to certain HMRC restrictions, this proportion can be altered in the future, subject to the property being valued by a chartered surveyor, a revised agreement being implemented and there being a transfer of cash (or other assets) between the joint owners to the appropriate value. Any transfer must be carried out at market value.

## 13. Insurance

It is the responsibility of the member trustees to ensure that buildings insurance cover is in place from exchange of contracts and at all times in the future.

We will also require there to be public liability insurance in place at all times and this is particularly important if the trustees are purchasing land (with no buildings), when one may not normally consider insurance appropriate.

We will require a copy of the certificate of insurance each year and reserve the right to take out an insurance policy, at the expense of the fund, if there is any doubt that the property is adequately insured.

## 14. VAT

It is normally possible for the trustees to elect for VAT on a particular property. We normally expect the member trustees, or their accountant, to arrange the submission of the VAT registration form and complete the quarterly VAT returns.

Complications may occur if the tenant is connected but 'Exempt' for VAT purposes, and specialist advice may be required. Please note that AJ Bell cannot provide tax advice.

If the purchase price is subject to VAT then please ensure that the finance to cover the VAT element is in place as it may take some weeks to complete the VAT registration and reclaim the VAT on the purchase price.

We will normally rely on the property management company, or the member trustees if they are managing the property, to raise the rental invoices (including VAT if applicable) in accordance with the lease. A copy of each rental invoice should be sent to us immediately to enable us to keep our accounting records up to date.

## 15. Fees

All fees in relation to the purchase of the property must be paid out of the SSAS. Any invoices in relation to work undertaken must be made out to the trustees of the SSAS.

In relation to the purchase of a property, this will include legal costs, Stamp Duty Land Tax, surveyor's fees, lender's fees (if appropriate), our fees and any disbursements.

Ongoing fees will include surveyor's fees, property management company fees, legal fees and our administration fees.

Any work relating to contamination or environmental issues will be subject to additional charges.

An estimate of fees in relation to a property purchase and ongoing administration can be provided on request.

You must ensure that there is always sufficient cash in the trustees' bank account to meet the initial and ongoing costs of the property.