

Small Self Administered Scheme (SSAS)

# Property Purchase Guide

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## 1. INTRODUCTION

This document summarises the issues involved should you wish to purchase a commercial property via the SSAS. Please read these notes carefully.

Momentum SSAS Trustees Limited is the Scheme Administrator for the SSAS and our terms and conditions in relation to the investment in commercial property, as set out in this document, together with requirements imposed on us by HM Revenue & Customs (HMRC), must be adhered to.

If the Trustees wish to proceed with a property purchase then our Property Questionnaire must be completed and returned to Momentum Pensions Limited.

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

We have also prepared guides for solicitors, commercial lenders and chartered surveyors and are happy to provide copies on request.

## 2. THE PROPERTY

A SSAS can purchase commercial property in the UK.

A SSAS cannot normally purchase property that includes a residential element; however, special rules apply for mixed commercial and residential properties.

Residential buildings (such as hotels or nursing homes) where trade is clearly identified with property will require special consideration. Please note, however, that properties such as these are unlikely to be acceptable.

If the Trustees intend purchasing 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 attached sporting rights will also require special consideration but is unlikely to be acceptable.

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 SSAS were trading. If you believe this may be of relevance we recommend you take specialist tax advice.

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 be acceptable.

Properties with either a history or potential for contamination problems are unlikely to be acceptable.

If you are considering a purchase at auction, please contact us in advance so that we can confirm suitability.

Property should be viewed as a long term investment and careful consideration must be given to any such investment if any Trustee is likely to require payment of benefits in the short to medium term.

We reserve the right to refuse to purchase any particular property if, in our opinion, it is not a suitable investment for a Momentum Pensions SSAS.

### 3. VALUATIONS

Before the property is purchased we will usually require a valuation and surveyor's report. This must be addressed to the Trustees of the SSAS. In instances where the purchase is being made from a connected party, a valuation and surveyor's report must be provided.

The report must include the following information:

- Market value of the property
- Rental value if there is to be a new tenant (noting the proposed terms of the lease)
- Rebuilding valuation (for insurance purposes)
- Confirmation as to whether a structural survey or any other further investigation is recommended

The property will need to be valued regularly in accordance with any rent review clause contained within an associated lease.

Momentum SSAS Trustees Limited reserves the right to appoint a chartered surveyor at the expense of the SSAS, to carry out any work required.

Once a surveyor has been appointed to act on behalf of the Trustees, it must be made clear to them that they are advising the Trustees of the SSAS and not the individual Member Trustee(s).

### 4. THE VENDOR

If you are connected to the vendor, we can only allow the transaction to take place on an arm's-length basis, with the value determined by a chartered surveyor.

'Connected' for this purpose is defined in section 839 of the Income and Corporation Taxes Act 1988. The definition is quite complex, although it does include any Member Trustee, members of their family and any business with which they are associated.

### 5. THE PURCHASE

The Trustees will need to appoint a solicitor to carry out the conveyance/transfer of the property on behalf of the Trustees. It must be made clear to them that they are advising the Trustees of the SSAS.

The Member Trustee(s) must ensure that there is sufficient cash held in the SSAS bank account to cover the purchase price and costs associated with the property purchase.

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

## 6. JOINT PROPERTY PURCHASE

A SSAS may be able to purchase a property with another party. Should a joint property purchase be proposed, please contact us as the suitability will be judged on a case-by-case basis. Joint purchases with registered pension schemes held with providers other than Momentum Pensions Limited shall not be permitted.

Prior to a joint property purchase taking place, ownership of the property will be subject to an agreement between all Trustees and joint owners. This agreement should be prepared by the conveyancing solicitor. This agreement must specify that, should the Trustees of the SSAS wish to sell part, or all, of their share in the property, then the other owners will be obliged to purchase this share at the appropriate market value and that, should this not be possible, the entire property will be sold.

## 7. VAT

If the Trustees wish to elect for VAT on a particular property, and this is permissible, a VAT registration form will need to be submitted and quarterly VAT returns will need to be made. Should the Member Trustee(s) require Momentum Pensions Trustees Limited to complete the VAT registration and ongoing VAT returns, additional fees will be charged as per the terms of our fee schedule.

Complications may occur if the tenant is a connected party but 'exempt' for VAT purposes and specialist advice may be required. Please note that Momentum SSAS Trustees Limited cannot provide tax advice.

If the purchase price is subject to VAT then sufficient funds will need to be available to cover any VAT element, as it may take some weeks to complete the property VAT registration and reclaim the VAT on the purchase price.

We will normally rely on a property management company, or nominated property manager, to raise the rental invoices (including VAT if applicable) in accordance with the lease. Copies of rental invoices should be provided to us in a timely manner so that we can ensure our accounting records are correctly updated and, if necessary, to enable us to complete quarterly VAT returns.

## 8. THE LEGAL OWNERS

The legal owners of the property will be each Trustee of the SSAS, including Momentum SSAS Trustees Limited.

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 Member Trustee(s) to arrange for original documents and Title Deeds to be kept in a secure place, although we must have access to these and reserve the right to lodge any such documents with our solicitors, at the expense of the SSAS.

## 9. INSURANCE

It is the responsibility of the Member Trustee(s) 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. This is particularly important if the Trustees are solely purchasing land when insurance may not normally be considered appropriate.

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

## 10. LEASE

The Trustees can lease the property to an unconnected third party or, alternatively, to an associated business or other connected party, subject to the terms of the lease being on a fully commercial, arm's-length basis, including a rental figure provided by a chartered surveyor.

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

We are required to complete identity and verification checks on all tenants on behalf of the SSAS. It is therefore important that we are provided with full details of all existing and proposed tenants at the earliest opportunity so as to avoid any potential delays.

A property manager must be chosen by the Member Trustee(s). They will be responsible, on behalf of the Trustees, for the management of the property, particularly with regard to the collection of rent and ensuring that the terms of the lease are being adhered to.

Momentum SSAS Trustees Limited cannot be appointed as a property manager.

Unless a Member Trustee has specialist property knowledge, we recommend that a third party property management company is appointed to carry out these duties.

We reserve the right to appoint a third party property manager of our choice if we experience difficulty administering the property whilst a Member Trustee is a nominated property manager. Such a course of action will be unavoidable if rent is not paid on time by a tenant that is classed as a connected party, and this includes the Member Trustee(s) directly. The cost of this will be borne by the SSAS.

We have an obligation to HMRC to monitor that rent is received when due and the Trustees must enforce the terms of the lease at all times, particularly if the tenant is a connected party. 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 behalf of the Trustees, then 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, it will be defined as an unauthorised payment (as defined in Finance Act 2004). As Scheme Administrator, we are required to report to HMRC any unauthorised payments that are made.

If an unauthorised payment is made by the SSAS, HMRC will impose a tax charge on the members 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 SSAS by HMRC.

To avoid the potential for unauthorised payments to arise, if the tenant is a connected party we strongly recommend that rent is paid strictly in accordance with the lease to the SSAS bank account by standing order.

With effect from 24 May 2004, the Control of Asbestos at Work Regulations 2006 requires that the duty holder (i.e. 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.

## 11. TENANTS

If there are leases in existence when the property is purchased then 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 with regard to the preparation of a new lease. The new lease must be a full repairing and insuring lease and have no onerous covenant on the Trustees.

It would be standard practice for the solicitor dealing with the purchase to also deal with the lease.

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

The Member Trustee(s) 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.

## 12. REFURBISHMENTS OR EXTENSIONS

The cost of any refurbishment 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 any work carried out that the SSAS is required to pay. Work can be undertaken by yourself or a connected person, although this must be carried out on an arm's-length basis as verified by a suitably qualified professional.

If improvements are carried out at the request of the tenant, and they 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.

### 13. TRUSTEE BORROWING

The Trustees of the SSAS can borrow money from a commercial lender to assist with the purchase of a property.

HMRC rules allow the Trustees to borrow up to 50% of the net asset value of the SSAS prior to borrowing taking place. This borrowing limit includes existing borrowing and any amount borrowed to finance VAT on property purchases.

#### Example

The Trustees of The Norton SSAS wish to purchase a further commercial property.

The proposed purchase price is £276,000 (£230,000 plus VAT)\*

*\*Additional legal / other costs have been disregarded for the purpose of this example*

The assets currently held by the SSAS are –

Cash	-	£150,000
Existing property	-	£500,000
LESS existing borrowing	-	(£150,000)
<b>Total Net Asset Value</b>	-	<b>£500,000</b>

The calculation to determine new borrowing is as follows –

Maximum borrowing (50% of Net Asset)	-	£250,000
LESS existing borrowing	-	(150,000)
<b>New Borrowing Available</b>	-	<b>£100,000</b>

Funding for the new property would therefore be provided as follows –

Existing cash	-	£150,000
Available borrowing	-	£100,000
<b>Total Funds Available For Purchase</b>	-	<b>£250,000</b>

In the above example, there is a shortfall of £26,000. If the proposed property purchase is to be completed, a contribution or transfer of benefits to cover the shortfall would be required.

The property or another asset held within the SSAS can be used as security for the mortgage; however, Member Trustee(s) cannot provide personal guarantees.

We ask that a copy of the offer letter be made available to us as soon as possible.

We insist that the Trustees' liability in relation to the loan be limited to the value of the SSAS.

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

It is the Member Trustee(s)' responsibility to ensure that sufficient funds are held in the SSAS account to meet scheduled mortgage repayments.

## 14. SALE OF THE PROPERTY

When the Trustees decide to sell the property, suitably qualified agents should be appointed to provide advice on the selling price and the best way to market the property. If the property is to be sold to a connected party, a suitable valuation must be obtained to confirm that the sale price represents the true market value of the property.

When a property is marketed 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. The Member Trustee(s) and/or the agent are responsible for meeting this requirement. Failure to comply can result in significant fines.

## 15. FEES

All fees in relation to the purchase of the property and ongoing administration must be paid by the SSAS. Any work undertaken relating to the property must be addressed to the Trustees of the SSAS.

In respect of a property purchase, this will include legal costs, stamp duty, surveyor and lender fees, our administrative fees and any disbursements.

Estimates of our fees relating to a property purchase and ongoing property administration are set out in our fee schedule, a copy of which is available on request.

It is the responsibility of the Member Trustee(s) to ensure that there is always sufficient cash in the Trustee bank account to meet initial and ongoing property related costs.

## 16. REGULATORY

Momentum SSAS Trustees Limited is a subsidiary of Momentum Pensions Limited and acts as the Scheme Administrator and Professional Trustee of the SSAS.

Momentum Pensions Limited is authorised and regulated by the Financial Conduct Authority.

The company is registered in England and Wales at the following address –

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